Neutral Citation Number: [2014] EWHC 191 (Comm)

Case No: 2011 Folio 1182

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10 February 2014

Before:

MR JUSTICE EDER

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Between:

(1) OTKRITIE INTERNATIONAL INVESTMENT MANAGEMENT LTD
(2) OTKRITIE SECURITIES LTD
(3) JSC OTKRITIE FINANCIAL CORPORATION
(4) OTKRITIE BANK (JSC)
(5) OTKRITIE FINANCE LTD

Claimants

- and -

(1) GEORGY URUMOV (*ALSO KNOWN AS* GEORGE URUMOV)
(2) DENNING CAPITAL LTD
(3) DUNANT INTERNATIONAL SA
(4) YULIA BALK
(5) RUSLAN PINAEV (*ALSO KNOWN AS* RONEN AVERBUH)
(6) ROSSMORE CORPORATE LTD
(7) PLEATOR HOLDING INC
(8) SERGEY KONDRATYUK
(9) F. O. FIRMLY OCEANS CORPORATION
(10) VLADIMIR GERSAMIA
(11) TEIMURAZ GERSAMIA
(12) TEMPLEWOOD CAPITAL LTD
(13) YEVGUENI JEMAI (*ALSO KNOWN AS* EUGENE JEMAI)
(14) JECOT S.A.
(15) IRINA JEMAI (*ALSO KNOWN AS* IRINA PARSINA)
(16) VANTAX LTD
(17) NATALIA DEMAKOVA

(18) QAST INTERNATIONAL SA
(19) MARIJA KOVARSKA (*ALSO KNOWN AS* MIRIAM AVERBUH) **Defendants**

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MR STEVEN BERRY QC, MR NATHAN PILLOW and MR ANTON DUDNIKOV (instructed by **Hogan Lovells**) for the **Claimants**
MR ANTONY PETO QC and MR JONATHAN McDONAGH (instructed by **Farrer & Co**) for the **First, Second and Fourth Defendants**
MR ANTONY PETO QC and MR JONATHAN McDONAGH (instructed by **Farrer & Co**) for the **Fifth, Sixth and Seventh Defendants** until 1 October 2013 (Day 30 of Trial)
MR ANTONY PETO QC and MR JONATHAN McDONAGH (instructed by **Cartier & Co**) for the **Nineteenth Defendant** from 14 October 2013
Mr IAN SMITH for **the Thirteenth Defendant**
MR TOM WEISSELBERG (instructed by **Byrne & Partners**) for **the Fourteenth Defendant** until 1 October 2013 (Day 30 of Trial)
MR BART CASELLA (instructed by **S C Andrew**) for **the Tenth, Eleventh and Twelfth Defendants**

Hearing dates: 12-13, 17-20, 24-27 June; 1-4, 8-9, 12, 15-18, 22-26, 29-31 July; 1-3, 7-10, 14-17, 21-24, 28-31 October; 4-8 November 2013
Final Written Submissions: 13 December 2013

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE EDER

Mr Justice Eder:

Part 1: Introduction

The Claims

1. In these proceedings the claimants seek damages and assert certain proprietary claims arising out of what they say are various acts of fraud and (in colloquial terms) “money-laundering” activities committed towards the end of 2010 and in the course of 2011 by some or all of the defendants. In total, the alleged frauds are said to involve approximately US$ 175m.

2. In many senses, this trial has been extraordinary. Quite apart from the number of defendants (there were originally some 19 of them), the main part of the trial occupied some 46 hearing days spread over almost 6 months (from June-November 2013) during which the court heard evidence (often with the assistance of interpreters) from over 20 witnesses including some by videolink.

3. At the heart of the case are two discrete allegations i.e. what the claimants refer to as the alleged “Sign-On Fraud” and the alleged “Argentinean Warrants Fraud” as described below. The relevant events cover a wide geographical spread including London, Moscow, Geneva, Spain and Latvia. The allegations (and counter-allegations) are wide-ranging and include alleged dishonesty, deceit, conspiracy, fraud, misrepresentation, bribery, forgery, blackmail, money-laundering, false impersonation, intimidation, entrapment, subterfuge, kidnap and even murder. Anyone sitting in court listening to the evidence and the parties’ respective submissions might have been forgiven for supposing that they were in the Old Bailey rather than in the Commercial Court sitting in the Rolls Building.

4. In this Judgment, I should make plain that I do not deal with every single point which has been raised in evidence or addressed in the parties’ submissions. In my view, to do so is both unnecessary and undesirable. Instead, I have sought to focus on what I consider to be the essential issues and, despite the length of this Judgment, to express my findings, reasoning and conclusions as succinctly as possible.

The Claimants

5. The claimants are (1) Otkritie International Investment Management Ltd (“OML”); (2) Otkritie Securities Ltd (“OSL”); (3) JSC Otkritie Financial Corporation (“OFC”); (4) Otkritie Bank (JSC) (“OB”); and (5) Otkritie Finance Ltd (“OFL”). OFC is the ultimate parent of the Otkritie group of companies (the “Otkritie Group”). It was established in March 2004 as a limited liability company under the laws of the Russian Federation. In December 2010, OFC was reorganised into an open joint-stock company. In terms of key personnel, Vadim Belyaev is (or at least was at all material times) the Chairman of OFC’s Board of Directors; Roman Lokhov is the former Deputy CEO of OFC; Dmitriy Popkov is a member of the Board of OFC; Dmitry Romaev is the CFO of OFC and Anatoliy Predtechensky is the former Chief Risk Officer of OFC. The Otkritie Group has a large network of offices in the Russian Federation with around 225 branches located in 53 Russian cities and has offices in London, New York, Limassol and Hong Kong. The main shareholders of the Otkritie

Group are (or at least were at all material times) Mr V Belyaev, Mr Boris Mints and VTB Bank (OJSC), a large Russian financial services group.

6. The Otkritie Group operates predominantly in commercial and investment banking sectors and provides brokerage and asset management services. As a result of a reorganisation in September 2010 through the merger of Petrovsky Bank OJSC, Otkritie Investment Bank (JSC) and Otkritie Commercial Bank, the Otkritie Group's commercial and investment banking operations are now performed through one legal entity, OB, a subsidiary of OFC. OB holds a banking licence from the Central Bank of the Russian Federation, as well as licences issued by the FSFR for securities trading and trading in derivative financial instruments. Mikhail Belyaev is the former chairman of OB's Board of Directors; Tatiana Chepeleva is a former COO of OB and Anatoliy Predtechensky is a member of the management board of OB.

7. Commercial banking operations performed by the Otkritie Group include lending, raising rouble-denominated deposits and deposits in freely convertible currencies, settlement and currency exchange operations. Investment banking operations include securities trading and trading in derivative financial instruments, operations on the equity share and debt capital markets, services related to mergers and acquisitions and operations on the money market, including interbank loan and foreign exchange markets. The Otkritie Group also provides brokerage services and performs securities trading and trading in derivative financial instruments, primarily through Otkritie Brokerage House OJSC in Moscow and OSL in London, both wholly owned subsidiaries of OFC.

8. OSL is licensed in England and regulated by the Financial Conduct Authority. In terms of key personnel of OSL, Mr Lokhov is the former CEO of OSL in Moscow and in London; Tatiana Chepeleva is the former COO of OSL; Howard Snell is the current chairman of OSL; Anton Shamarin was the head of risk in Moscow and Malika Sharipova was the former risk manager in Moscow. Otkritie's employees during the relevant period include Messrs Urumov, Sergey Kondratyuk, Pinaev, Gherzi, Ramaiya, Mufti, Mujagic and Katorzhnov.

9. OML is a BVI Company that is wholly owned by OFC, and it provides management services to other Otkritie Group companies. The directors of OML are nominees. At all relevant times, the day to day management of OML was conducted by OFC.

10. As stated above, the group is generally referred to as the "Otkritie Group" or "Otkritie" and unless the context otherwise specifically requires, I shall refer to one or more of the claimants as "Otkritie".

11. The claimants have throughout been represented by Hogan Lovells and Counsel led by Mr Steven Berry QC with Mr Nathan Pillow and Mr Anton Dudnikov.

Mr Sergey Kondratyuk

12. One of the alleged fraudsters was the named 8th defendant, Mr Sergey Kondratyuk. He was born in 1981 and after working at Web-Invest Bank and then KIT Finance joined Otkritie in 2009 as a director of OB and Head of Fixed Income Trading ("FIT"). He worked at Otkritie's offices in Moscow until his resignation in September 2011. After the balloon went up in August 2011, Mr Kondratyuk was arrested and

charged with certain criminal offences in Switzerland. In the event, he eventually admitted his involvement in the Sign-On Fraud as well as the Argentinean Warrants Fraud; and the claimants settled their claims against him on terms set out in a Settlement Agreement dated 25 January 2013. As part of the settlement, Mr Kondratyuk has returned some of the fraud proceeds totalling approximately US$ 25m. Mr Kondratyuk served a prison sentence in Switzerland for these frauds and was eventually released in April 2013. He has also met with the City of London Police and freely provided them with a full account of what he says was his involvement in the frauds with others.

13. As part of the settlement, Mr Kondratyuk also agreed to assist the claimants in pursuit of their claims against other parties. Thus it came about that he provided three witness statements and gave evidence in this trial on behalf of the claimants. Such evidence was given by videolink from Paris (pursuant to an earlier order of HH Judge Mackie QC and, after further submissions at the beginning of the trial, reconfirmed by me) in particular because he said that he might be arrested by the authorities here and also feared for his personal safety if he came to England. He was cross-examined over a number of days. In essence, it is his evidence that he participated in the Sign-On Fraud together with Georgy Urumov (the 1st defendant) and Ruslan Pinaev (the 5th defendant); and that all three were also involved in the Argentinean Warrants Fraud together with Yevgueni (Eugene) Jemai (the 13th defendant) and Vladimir Gersamia (the 10th defendant). The claimants also say that Yulia Balk (the 4th defendant and wife of Mr Urumov) was involved in the Argentinean Warrants Fraud. As for the other defendants, it is the claimants’ case that although they were not involved in the actual frauds, they are liable in particular for dishonest assistance or knowing receipt with regard to parts of the fraud proceeds. Plainly, Mr Kondratyuk is a central witness. There is no doubt that the claimants rely heavily upon his evidence in support of their case in these proceedings which evidence, they say, is largely confirmed by other evidence. In any event, the claimants say that their case is established even without Mr Kondratyuk’s evidence.

14. The defendants all say that Mr Kondratyuk’s evidence can be given no credence whatsoever, in particular because he is a self-confessed liar and fraudster on a grand scale; because he is plainly an individual who used his obvious charisma and outwardly plausible and confident manner to dupe a number of business colleagues and associates; because he is not merely an unreliable witness but someone who is untrustworthy; and because the assistance he has given the claimants by giving evidence against the other defendants is driven by self-interest. In particular, the defendants rely on the fact that even after his arrest, he deliberately lied repeatedly to the Swiss prosecutor. In addition, the defendants say that Mr Kondratyuk lied to the court. Moreover, as appears further below, it is Mr Smith’s submission that Mr Kondratyuk decided falsely to implicate Mr Jemai (and also Jecot S.A. and Ms Jemai) for a number of specific reasons.

15. Further, the defendants say that when giving evidence during the trial, Mr Kondratyuk was an evasive and entirely unsatisfactory witness. In particular, Mr Smith submitted that Mr Kondratyuk was evasive in relation to his own assets; that he has a propensity falsely to implicate others; that it is manifest that he deliberately gave false evidence with regard to a number of important matters including, for example, with regard to his share of the fraud proceeds; that his decision to give evidence by videolink (from

Paris) was plainly tactical and should serve to undermine his credibility; that it seriously slowed down his evidence and meant that he avoided the close scrutiny of the court; that given the *pentiti* nature of the evidence to be given by Mr Kondratyuk his absence from the court room itself was highly unsatisfactory; that the manner in which he gave evidence was indicative of the fact that he was not a witness who was seeking to assist the court in discovering the truth; that he constantly failed or refused to answer even the most straightforward questions; and that his aim was to recite mantras (which he did in a robotic fashion) and to use various tricks to run down the cross-examination clock and to avoid saying anything that was not already contained within his "script" (i.e. the English language statement that had been crafted for him as part of his Settlement Agreement with the claimants).

16. At a very late stage of the trial, Mr Smith sought to introduce in evidence further documents which had apparently been recently obtained from Snoras Bank pursuant to a letter of request (the "Snoras documents") and served late further written submissions in relation thereto. Exceptionally, I permitted the other parties to serve their own written submissions in response which both Mr Peto and Mr Berry did following close of final oral submissions. In essence, Mr Smith and Mr Peto both submitted that the Snoras documents were important because they were probative of a number of matters – and, in particular, undermined Mr Kondratyuk's credibility. I remain extremely doubtful that it would be proper to admit these further documents in evidence at such a late stage of the trial. Although they were not documents within the possession or control of Mr Jemai and, as I say, obtained by virtue of a letter of request, there was, in my view, no good or sufficient reason why they could not have been obtained at an earlier stage. However, having read the relevant documents and considered the parties' submissions, it is sufficient to say that they do not, in my view, undermine Mr Kondratyuk's credibility but that, as submitted by Mr Berry, in certain respects at least, they support Mr Kondratyuk's evidence.

17. Be that as it may, I accept that Mr Kondratyuk's evidence must be approached with very great caution. In particular, it is obvious that he is extremely intelligent (as were many of the other defendants); that he is a charismatic individual with great charm; that he is a self-confessed rogue, fraudster and serial liar; that, even on the basis of his own evidence, he is capable of cunning deception on a large scale; and that his agreement to give evidence against the other defendants may well be driven, at least in part, by self-interest. I also agree that his written statements were most unsatisfactory. In particular, §H1.4 of the Commercial Court Guide expressly provides that if a witness is not sufficiently fluent in English to give his evidence in English, the witness statement should be in the witness's own language and a translation should be provided. However, although Mr Kondratyuk's statement was in the English language, it was plain when he gave evidence that he was not fluent in English. Further, I agree that the fact that Mr Kondratyuk gave evidence over some 4 days by videolink was very unsatisfactory particularly since he needed an interpreter (although the latter was unavoidable). Of course, the rules of court provide that in an appropriate case, permission may be granted for the evidence of a witness to be given by videolink; and such an order was made (by, I believe, consent) at a CMC before the trial. However, as noted above, at the beginning of the trial, I revoked that order because, given the central importance of Mr Kondratyuk's evidence, I considered that it was highly desirable, if possible, for Mr Kondratyuk to give evidence in person – a view which, I should say, was endorsed and supported by Mr Berry on behalf of the

claimants. However, in the event, after further consideration, I was satisfied that Mr Kondratyuk's fear that he might be arrested if he came to England was well-founded or at least could not be eliminated or ignored; that, in those circumstances and for reasons set out in my ruling which I do not propose to repeat, his refusal to attend the trial in person was understandable; and that I should in effect reinstate the earlier order that had been made giving permission for Mr Kondratyuk's evidence to be given by videolink. Finally, in this context, I also agree that certain parts of Mr Kondratyuk's oral evidence were perhaps slightly stilted and that he did not always answer the questions put to him squarely.

18. However, notwithstanding all these formidable criticisms and "warning signs", I am not persuaded that it would be right simply to reject Mr Kondratyuk's evidence in its entirety. As appears from the rest of this Judgment, I have no doubt that at least certain parts of his evidence are true and support the claimants' case although I remain far from convinced that certain other parts are true and honest. The difficulty in the present case is that, in my view, all the individual defendants i.e. Mr Urumov, Ms Balk, Mr Pinaev, Ms Kovarska, Mr Gersamia, Mr Gersamia Snr, Mr Jemai and Ms Jemai as well as others (including Mrs Jemai) gave evidence which was dishonest at least in part. In my judgment, the right approach is to consider <u>all</u> the evidence with very great caution and scepticism. That is what I have sought to do.

The defendants

19. As appears from the title to these proceedings, there were (at least originally) some 19 defendants although, as appears below, the claimants obtained judgment in default against and/or made settlements with some of the named defendants before the commencement of this trial. The remaining "active" defendants fall into four main groups as follows.

The Urumov defendants

20. The 1st, 2nd and 4th defendants i.e. Georgy Urumov, Denning Capital Ltd ("Denning") and Yulia Balk, Mr Urumov's wife, have been referred to generally as the "Urumov defendants". Mr Urumov was born in 1979 in North Ossetia. However, his secondary education was in Geneva, Switzerland; and he has degrees from the CASS (City) Business School in London and the LSE. He initially worked with Lehman Brothers and in 2005 moved to HSBC. In 2009 he joined Knight Capital Ltd ("Knight") as Executive Director of the Emerging Markets Fixed Income Desk. By all accounts, he was well known in the industry, a star trader at Knight and extremely successful. At Knight, he was earning approximately US$ 2.5m per annum and, on his own evidence, would have earned between US$ 7m and US$ 10m over the two years of his contract if he had remained at Knight. Ms Balk was born in 1980 in Moscow, Russia. She also went to school in Switzerland and attended the LSE where she met Mr Urumov in 1998. They married almost a decade later in 2007, the plan being (according to her own evidence) for her to work for a short period in mergers and acquisitions after which she would focus on family life and developing her own property development business. After a shortened period of maternity leave, she returned to full time work on 1 October 2010. Denning is a company incorporated in the BVI and beneficially owned by Mr Urumov and Ms Balk. These three defendants were all represented throughout the trial by Farrer & Co and Counsel led by Mr Antony Peto QC with Mr Jonathan McDonagh.

The Pinaev defendants

21. The 5th, 6th, 7th and 19th defendants i.e. Ruslan Pinaev, Rossmore Corporate Ltd ("Rossmore"), Pleator Holding Inc ("Pleator") and Marija Kovarska, Mr Pinaev's wife, were referred to generally as the "Pinaev defendants". Mr Pinaev was born and brought up in Moscow although he also studied in Switzerland. According to his evidence, he met Mr Urumov and Ms Balk in 2001 while they were all studying in London – and he also obtained a degree from London University. After obtaining a further degree from the Bocconi Institute in Milan, he worked as a derivative trader for Enigma Trading Services Ltd. In 2007, he joined the Ursa Bank in Moscow as Co-Head of FIT and then in 2008 joined the Promsvyazbank in Moscow as Head of Eurobonds Trading. Following an approach from Mr Kondratyuk in Spring 2010, he joined Otkritie shortly thereafter as Global Head of Otkritie's Bank's Eurobond Trading in which position (according to his own evidence) he expected to earn not less than US$ 5m to US$ 6m per annum. According to his statement, he joined Otkritie in late June/early July 2010. However, his employment contract is dated 25 May 2010 and refers to an employment commencement date of 2 June 2010; and other documents confirm that he was already working at Otkritie by the beginning of June 2010. Ms Kovarska was born in Riga, Latvia. She married Mr Pinaev in 2008. She previously worked at Parex Bank in Latvia until she left in December 2008 at which time she was Deputy Vice President and Deputy Head of the Retail Division. According to her statement, she also had an interest in interior design and property development. Although Mr Pinaev continued to work in Moscow, he and Ms Kovarska bought an apartment in Geneva in May 2010; and from August 2010, she lived in that apartment in Geneva with their two daughters. Rossmore and Pleator are companies incorporated in the BVI and in Panama respectively and are both beneficially owned by Mr Pinaev.

22. These defendants were all represented initially by the same solicitors and Counsel as the Urumov defendants i.e. Farrer & Co and Counsel led by Mr Peto QC with Mr McDonagh. However, following a judgment I gave at a very late stage of the trial on Day 35 (9 October 2013), Farrer & Co ceased to act for the Pinaev defendants although they (and Mr Peto and Mr McDonagh) continued to act for the Urumov Defendants. Thereafter, Mr Pinaev acted for himself. At one stage, Mr Pinaev indicated his intention to seek an order for permission to represent Pleator and Rossmore; but in the event such application was never pursued. At a late stage (18 October 2013), Ms Kovarska instructed new solicitors, Messrs Cartier & Co, to act on her behalf; and Mr Peto and Mr McDonagh continued to represent her. Even later i.e. on 25 October 2013, Mr Pinaev informed the court that he did not intend to participate actively any further in these proceedings; and that is what happened.

The Gersamia defendants

23. The 10th, 11th and 12th defendants i.e. Vladimir Gersamia, his father, Teimuraz Gersamia and Templewood Capital Ltd ("Templewood") were referred to generally as the "Gersamia defendants". Mr Vladimir Gersamia (whom I shall refer to simply as Mr Gersamia) was born in Georgia but went to school in England when he was 15. At the age of 18, he went to university in Bristol and has lived in England ever since. He initially worked for Merrill Lynch (between 2005-2007); and then Fortis Bank (between 2007-2010) before moving to Threadneedle Asset Management Ltd ("Threadneedle") where he worked in Threadneedle's London offices from June 2010

as an emerging markets trader. He was suspended in early August 2011 and following an internal investigation and disciplinary hearing by Threadneedle was subsequently dismissed in September 2011. Mr Teimuraz Gersamia (whom I shall refer to as Mr Gersamia Snr) is 62 years old and a Georgian national. He trained as a medical doctor but no longer practises as such. For the last 20 years, he has worked primarily for Dutch and American pharmaceutical companies as well as working for a short period as Deputy Minister of Health in the Georgian Government. Since 2010, he has worked for a small Dutch pharmaceutical company as their Regional Director for the Eastern European countries. He has a small office in The Hague but his job focuses on the marketing, promotion and sales of pharmaceutical products to the CIS countries as well as Mongolia and he spends about 80% of his time travelling in that region. Templewood is a company incorporated in the BVI and beneficially owned by Mr Gersamia. These defendants were represented throughout by solicitors, S C Andrew and Counsel, Mr Bart Casella.

The Jemai defendants

24. The 13th defendant, Yevgueni (Eugene) Jemai is 28 years old. He was educated in Switzerland and obtained a degree from Royal Holloway University, London. According to his evidence, he previously worked for Kangqui Oil (Shanghai) and the 14th defendant, Jecot S.A. ("Jecot"), which is a Swiss company whose majority shareholder, sole director and controller was at all material times Mr Jemai's mother, Olessia Jemai. Mr Jemai joined the Moscow Office of Otkritie in mid-August 2010. According to Mr Kondratyuk's evidence, Mr Jemai had been at school with Mr Pinaev; he (i.e. Mr Jemai) also knew Ms Balk; they were "very close"; and it was Mr Pinaev who persuaded Mr Kondratyuk that Mr Jemai should be recruited by Otkritie. According to Mr Jemai's evidence, he joined Otkritie as a "trader's assistant" and thereafter continued in this very minor role - although the claimants say that he was, in fact, a "trader" rather than a mere assistant who was, at the very least, certainly capable of carrying out the necessary tasks to execute the fraudulent trades. According to his evidence, he was the most junior member of the FIT in Moscow although Mr Kondratyuk's evidence is that he often worked in OSL's office in London. Mr Jemai was a litigant in person but represented at trial by Mr Ian Smith (on a direct access basis).

25. The 15th defendant, Ms Irina Jemai, is Mr Jemai's sister. She joined HSBC Private Bank in 2004 where she has worked continuously since that date. Her status when she gave evidence in July 2013 was as an investment advisor at HSBC. However, her evidence was that she was soon to be fired by HSBC because of the claimants' actions against her – although I do not know whether that has in fact happened. Ms Jemai has throughout been a litigant in person who represented herself.

26. The 14th defendant, Jecot, was originally represented in these proceedings by Byrne & Partners and Counsel, Mr Tom Weisselberg. However, they ceased to act for Jecot at a late stage of the trial (26 September 2013) and Jecot was then represented, with my permission, by Mrs Jemai until 14 October 2013, when the court was informed by the Bankruptcy Office of Geneva that she in fact had no authority to act for Jecot. Accordingly, I therefore revoked the order which I had previously made giving Mrs Jemai permission to represent Jecot. It is not clear whether Mrs Jemai ever had authority to act and, in that regard, I should mention that the claimants have reserved their position. In any event, by letter dated 21 October 2013 from the Office des

Faillites, Republique et Canton de Geneve (i.e. Bankruptcy Office of Geneva), this court was informed that on 11 July 2013, the Court of First Instance of Geneva had declared Jecot bankrupt; that the Bankruptcy Office of Geneva was the competent authority for the management and the liquidation of Jecot; and that the bankrupt estate of Jecot represented by the Bankruptcy Office had decided not to continue to participate in the present proceedings.

The Funds Flow Charts

27. At my request, the parties agreed in the course of the trial a series of diagrammatic figures – referred to as the "Funds Flow Charts" – which summarise much of the underlying basic information relating to both alleged frauds including the flow of monies which are said to be the proceeds of fraud. That exercise saved much time and has been very helpful. These agreed figures are now attached to and form part of this Judgment; and I will refer to them as necessary in the course of this Judgment. They may be found at Appendix A.

The alleged Sign-On Fraud

28. The alleged Sign-On Fraud concerns the circumstances in which the 1st defendant, Mr Urumov, came to be employed by the second claimant (OSL). As stated above, prior to such move, Mr Urumov was a trader – and by all accounts a star trader – employed by Knight. In the event, Mr Urumov and four other traders (namely Messrs Mujagic, Mufti, Gherzi and Ramaiya, all part of his team at Knight), joined OSL on payment by OSL of a "golden hello" of some US$ 25m (the "sign-on fee"), such amount being paid in November 2010. In essence, the claimants say that this amount was paid in reliance upon various representations by Mr Urumov as summarised in the first part of Schedule F to their closing submissions of which the most significant are that (i) each of those five individuals had a guaranteed income of US$ 5m p.a. at Knight and (ii) the sign-on fee would be shared equally i.e. US$ 5m each to Mr Urumov and the other four team members. The claimants assert that such representations were false and indeed made dishonestly by Mr Urumov. In particular, it is alleged that Mr Urumov personally received for himself considerably in excess of US$ 5m i.e. approximately US$ 8m out of which some US$ 6,552,889 was subsequently transferred to the 2nd defendant i.e. Denning; that the vast bulk of the remainder of the US$ 25m was <u>not</u> shared with the rest of the team but rather was utilised by Mr Urumov to pay "bribes" or "kickbacks" viz US$ 5,667,000 to Mr Pinaev and US$ 6,377,111 to Mr Kondratyuk; and that the sign-on fee would not have been agreed or paid if such misrepresentations had not been made and the claimants had known the truth.

29. The claims in respect of the alleged sign-on fraud are pursued against Mr Urumov, Mr Pinaev and Denning jointly and severally as summarised in Table 1 below:

Mr Urumov	OML	Deceit (alternatively s2(1) Misrepresentation Act 1967)	Damages	US$ 23,000,000
	OFC / OSL / OML	Bribery	Restitution / proprietary	US$ 12,044,111
	OFC / OSL /	Dishonest assistance	Equitable	US$ 12,044,111

	OML		compensation / account of profits	
	OML	Conspiracy	Damages	US$ 23,000,000 (alternatively US$ 12,044,011)
Mr Pinaev	OFC / OSL / OML / OB	Bribery	Restitution / proprietary	US$ 12,044,111 (alternatively US$ 5,667,000)
	OFC / OSL / OML / OB	Breach of fiduciary duty	Equitable compensation / account of profits	US$ 12,044,111
	OFC / OSL / OML / OB	Conspiracy	Damages	US$ 23,000,000 (alternatively US$ 12,044,111)
	OB	Russian law	Declaration, damages	US$ 23,000,000 (alternatively US$ 12,044,111)
	OML / OSL / OFC	Russian law	Restitution	US$ 5,667,000
Denning	OML	Knowing receipt	Account / equitable compensation / damages	US$ 6,552,889

30. As to this summary table, I should clarify two points. First, there was, at one stage, a potential issue as to which of the claimants had "title to sue" in respect of any particular cause of action. Thus, in the second column of Table 1, there are references to OFC, OSL, OML and OB. The explanation for this is that each company had a slightly different role. Thus OSL, OML and OB are the employers of Mr Urumov, Mr Jemai and Mr Pinaev respectively; OML is also the entity that actually made the payment (and OSL made the payment in relation to the Second Trade); and OFC is the entity that apparently agreed to and made good the various losses suffered by the Otkritie Group. However, by the end of the trial, Mr Berry on behalf of the claimants confirmed that the question of which entity had title to sue was not a point of any significance to the claimants. Equally, Mr Peto on behalf of the Urumov defendants and Ms Kovarska confirmed that no question of "title to sue" arose – although it may be necessary to consider this aspect further when drawing up any order of the court. Second, Mr Peto originally submitted on behalf of Mr Urumov and Mr Pinaev that certain of the claims advanced against them were governed by Russian law. However, in the event, Mr Peto expressly abandoned any such case so far as Mr Urumov was concerned. No such express concession was made on behalf of Mr Pinaev (who was by that stage of the trial no longer represented by Mr Peto and not participating actively in the trial) but absent any positive final submissions by him to support any case under Russian law, it seems to me that I can and should proceed to determine the claims against him in accordance with English law.

31. As to the substance of these claims, on the defendants' side, Mr Urumov denies making any misrepresentations prior to the date when the sign-on deal was agreed – which he says was at a meeting in Moscow on 11 October 2010 – or at any material time. In any event, he denies that the claimants relied upon any misrepresentations. Rather, he says that the deal agreed on 11 October was that he would receive US$ 25m to bring his team from Knight to OSL; that this sign-on fee was, in effect, money due to him to do with as he liked; and that therefore it was entirely a matter for him to

decide what he did with that money and, in particular, what, if any, sum was to be paid over to his team members or indeed anyone else. Thus, although Mr Urumov admits that he paid the sums alleged to Messrs Pinaev and Kondratyuk, he denies that these were bribes or kickbacks. In particular, as to the claims in bribery/unlawful conspiracy, it is his case that it was only after he did the deal with OSL and agreed the sign-on fee on 11 October that he had a meeting with Messrs Pinaev and Kondratyuk and was persuaded to pay them what was approximately half of the sign-on fee. Thus, it is Mr Urumov's case that he is not liable for the tort of bribery or unlawful conspiracy. Mr Pinaev likewise admits receipt of part of the sign-on fee but denies that this constituted a bribe or kickback.

The alleged Argentinean Warrants Fraud

32. The second main allegation (referred to by the claimants as the Argentinean Warrants Fraud) concerns one particular deal which was made on 9 March 2011 involving, say the claimants, a fraudulent conspiracy whereby OSL was deceived into purchasing some 1.65 billion Argentine GDP peso (ARS) denominated warrants (ISIN ARARGE03E147) at a price of 12.937 per cent in US$, being a total of US$ 213,468,750 (the "warrants") when in fact such warrants were in fact worth only approximately US$ 62m i.e. an overpayment of approximately US$ 150m. More precisely, based on an actual market price on 9 March 2011 of US$ 3.79 per cent, the actual value of the warrants on that date was US$ 62,535,000 which equates to a loss to OSL of US$ 150,933,750.

33. I should mention that at the beginning of the trial, Mr Peto originally advanced a case on behalf of those clients he then represented including in particular Mr Urumov and Mr Pinaev that OSL had not, in fact, suffered any loss at all and that the stated loss had in fact been incurred by one of Otkritie's clients i.e. Gavinic Investments Ltd ("Gavinic") to whom this particular deal had been booked and who were not parties to these proceedings. There was much evidence on this topic in the course of the trial; but in the event this point was abandoned by Mr Peto in the course of final submissions. I say no more about this point.

34. Thus, it was at least by the end of the trial common ground that such deal was in fact entered into on 9 March 2011 and executed shortly thereafter by OSL, the purchase or "buy" being made via a third party, Adamant Capital Partners AD ("Adamant", a Bulgarian brokerage company) from Gemini Investment Fund Ltd ("Gemini", a Bahamian company)/AB Bankas Snoras ("Snoras", a Lithuanian bank now in insolvency); and it is also common ground (or at least not disputed by any party) that the figures stated above are correct and that OSL did indeed suffer the loss referred to. Further details of the deal appear from Figure 4. Although not expressly admitted by the defendants, there is in my view no doubt whatsoever that this huge loss suffered by OSL was the result of a cunning and well-orchestrated fraud. In broad terms, the main issue in these proceedings is not whether the fraud occurred but whether any and if so which of the defendants was party to such fraud and/or was involved in laundering the proceeds of such fraud.

35. At this stage, I would only mention one other point by way of clarification with regard to the part played by Adamant. There is no doubt that Adamant acted as principals buying the warrants from Gemini/Snoras and selling them on to OSL on their own account making a small "turn" or profit for themselves. However, it is equally plain

from the evidence that the role Adamant played was as a "switch". That is the term which has been used in this case to describe the role played by an intermediary such as Adamant in this particular transaction. There may be many reasons why a "switch" is used in certain transactions. For example, a "switch" may be used to reduce or to avoid tax or for other fiscal reasons – whether legitimate or illegitimate. Another reason may be because there are no existing trading (or credit) lines between two parties (A and B) who wish to carry out a deal. In such circumstances, the difficulty of doing a deal between A and B may be resolved by interposing a "switch" between them – provided, of course, the "switch" has a trading (or credit) line with A and B. Another possible reason may be the desire to hide the identity of one or other party. It is this last reason which the claimants say explains why Adamant was used as a "switch" and, moreover, that such desire was itself motivated to seek to cover up the fraud on Otkritie who, say the claimants, thought that their counterparty, the ultimate seller, was in fact Threadneedle.

36. Further, as part of the fraudulent conspiracy, the claimants say that Messrs Urumov, Pinaev and Jemai made false statements that the true value of the warrants was about 15–16 per cent in US$ whereas to their knowledge, and as published by public sources such as Bloomberg and Reuters, the true value and market price was about 15-16 per cent in ARS i.e. local Argentinean currency – or around US$ 3.75 to US$ 4 per cent, the exchange rate at all material times being about ARS4:US$1. In broad summary, it is the claimants' case that the fraud was perpetrated by those involved in the fraud misrepresenting and manipulating the exchange rate.

37. The claimants say that in addition to the fact that the fraudsters falsely identified the ultimate seller as Threadneedle they also represented that there would be, and subsequently was, as an integral part of the deal, a binding "forward" or "sale" contract by which Threadneedle agreed to re-purchase the warrants later, at a price higher than the purchase price (initially 3% higher, i.e. 15.9375 per cent, later changed to 13.8425 per cent, in US$). I should make absolutely plain that Threadneedle is, of course, a well-established and reputable asset management company. However, as is now common ground, there never was any sale by Threadneedle to Otkritie nor any such forward or onward "sale" contract by Otkritie to Threadneedle.

38. In essence, the fraudulent misrepresentations allegedly made by Mr Urumov, Mr Pinaev and/or Mr Jemai to OSL and/or OFC can be summarised as follows:

Representation	Falsity
1. The First and Second Warrants Trades were genuine commercial transactions and the First Warrants Trade was profitable.	The First and Second Warrants Trades were not genuine commercial transactions, but were instead the means of defrauding OSL and/or OFC. Furthermore, the First Warrants Trade had been a sham transaction, designed to give the appearance of a genuine commercial deal, when in fact it was a sucker trade financed by Mr Urumov, Mr Pinaev and Mr Kondratyuk in the knowledge that they stood to make much more money from the Second Warrants Trade.
2. The Warrants were denominated and traded in US$.	The Warrants were denominated and traded in ARS and not in US$.

3. The correct rate of exchange for the Warrants was US$1:ARS1 and consequently the purchase of the Warrants by OSL was at or at a discount to their true value.	The correct rate of exchange was in fact approximately US$1:ARS4, such that the price paid by OSL for the Warrants was four times over-valued.
4. The Forward Trade had been agreed with Threadneedle.	There was not and never had been any Forward Trade.
5. The Forward Trade was confirmed on the Bloomberg system.	There were no confirmations of the Forward Trade on the Bloomberg System.

39. It is the claimants' case that those involved in this fraud included Messrs Urumov, Pinaev and Kondratyuk as well as Ms Balk, Mr Jemai and Mr Gersamia. In particular, according to Mr Kondratyuk's evidence, it was Mr Urumov who first came up with the idea of what became the Argentinean Warrants Fraud; that the "plot" was specifically discussed between Mr Kondratyuk, Mr Pinaev, Mr Urumov and Mr Jemai in October 2010; that the strategy for implementing the plot was then further discussed in the following months; that it was decided that Mr Urumov would lead the operation as the "chief" answering all the financial questions from Otkritie; that Mr Pinaev would be responsible for buying securities from the market and relations with Gemini/Snoras; that Mr Kondratyuk himself would ensure against an executive check by the management because he had their trust and was director of FIT Moscow; that Mr Jemai would be the trader who would execute the deals because in the event of a "negative scenario", he could say that he was just a "junior" and that he knows nothing at all i.e. play the "ignorant fool"; and that Mr Gersamia would if necessary help by pretending that Threadneedle was the counterparty with OSL in the sale and buy-back of the warrants.

Mr Gherzi

40. In addition, it is Mr Kondratyuk's evidence that the fraudsters agreed that further assistance would be provided by Mr Alessandro Gherzi. As stated above, Mr Gherzi was originally employed by Knight where he was part of Mr Urumov's team and then moved to Otkritie together with Mr Urumov and the rest of the team. He started work at Otkritie in February 2011 as Head of International Sales. His role was to talk to clients and encourage them to use Otkritie. As part of that role, he was tasked by Mr Urumov to establish and develop OSL's relationship with international hedge funds and asset managers including Threadneedle. According to Mr Gherzi's evidence, he was well placed to do this with Threadneedle because he had both a social and business relationship with Mr Gersamia.

41. Mr Gherzi was a witness called by the claimants. In summary, Mr Casella on behalf of Mr Gersamia submitted that he i.e. Mr Gherzi acted in a "quite Machiavellian manner"; that he was fully aware of the Sign-On Fraud; that he actively participated in the Argentinean Warrants Fraud in particular by the creation of fictitious deals involving Threadneedle and by a series of cunning deceptions; and that he should be treated as dishonest witness. For his part, Mr Gherzi acknowledged in evidence that he had received US$ 2.532m from Otkritie as a sign-on fee; that after the Argentinean Warrants Fraud he received a further payment of US$ 2.5m which he said had been

agreed in advance between Mr Urumov and himself to an account in the name of his (i.e. Mr Gherzi's) company in the BVI, Airdale International Ltd ("Airdale") from another company, Bexerton Ltd ("Bexerton", a Seychellois company nominally owned by Mr Gersamia's father, Mr Gersamia Snr). However, Mr Gherzi's evidence was that he had not acted dishonestly; that on the contrary he had been used by Mr Urumov and Mr Pinaev as the "fall guy"; that it had become clear to him that he had been duped by Mr Urumov; that the entire arrangements in relation to the Argentinean Warrants were fraudulent; and that it was in those circumstances that he agreed to a civil settlement with Otkritie.

Other alleged fraudsters?

42. In addition, I should mention that there have been suggestions that various other individuals who are not parties to these proceedings were, or at least may have been, involved in the fraud including Mr Sergey Churin, a representative of Gemini at the material time in 2011 but now deceased.

Other proceedings

43. The alleged fraud has generated criminal investigations in various countries including Russia, Switzerland and England. These are continuing at least in part.

Judgments/Settlements obtained by Otkritie

44. As this action has progressed, the claimants have obtained judgments in default against and/or settled on favourable terms with several of the defendants. Judgments in default have been entered against Dunant International S.A. (3rd defendant), Mr Kondratyuk (8th defendant), F.O. Firmly Oceans Corp ("Firmly Oceans", 9th defendant), Natalia Demakova (17th defendant, Mr Kondratyuk's sister), Qast International S.A. ("Qast",18th defendant) and Vantax Ltd ("Vantax", 16th defendant). Settlement has been achieved with Mr Kondratyuk, Firmly Oceans, Ms Demakova Qast and Vantax. In particular, as already noted, Mr Kondratyuk agreed to transfer to the claimants the monies he misappropriated in the sum of approximately US$ 25m; and Mr Gherzi has also returned certain monies he received as part of his settlement with Otkritie although, as stated above, he denies any dishonesty on his part.

45. At a very late stage of these proceedings, a question was raised on behalf of certain of the defendants (in particular by Mr Peto and Mr Casella) that if I were to conclude that any defendants were liable, then the amount of any such liability was to be reduced by the amounts which have been recovered by the claimants from third parties. This was disputed by the claimants. In particular, Mr Berry submitted that any such recoveries did not reduce the amount of any judgment that might be entered against any particular defendant and that it was for the claimants to decide what recoveries should be allocated to any particular claims. In his submission, such recoveries were irrelevant other than, possibly, at the stage of enforcement. It is unfortunate that this particular issue only really surfaced so very late in the proceedings. One of the difficulties is that I do not even know the precise amount of any net recoveries that have been made. In the event, I have decided that any argument on this topic can and should be dealt with after delivery of this Judgment and before any Order is drawn up when the parties will know my decision in principle on the various claims; and the court can if necessary be provided with

information/evidence with regard to the amount of net recoveries. It follows that anything I say in this Judgment is subject to further consideration of this point.

46. By way of introduction, it is convenient to mention three other important matters relating to the alleged Argentinean Warrants Fraud which occupied a large part of the focus of the trial.

The First Trade (aka the "sucker trade")

47. First, the claimants say that the alleged Argentinean Warrants Fraud was preceded by an earlier "buy-sell" transaction involving Argentinean warrants implemented by the fraudsters in late February/early March 2011 (the "First Trade"). In summary, the claimants say that the First Trade was, at least in part, a template for the later fraud, designed to give the appearance of being extremely profitable and part of a plan to inveigle the claimants into the purchase of more Argentinean warrants. Hence, the claimants refer to this as the "sucker trade". It is important to note that the First Trade did not cause any loss to the claimants but, on the contrary, made a not insignificant profit for OSL (approximately US$ 2.5m) which profit was, say the claimants, in effect funded by Messrs Urumov, Pinaev and Kondratyuk.

The would-be plea of ex turpi causa

48. Second, in the course of the trial, Mr Peto (on behalf of the Urumov and Pinaev defendants) and Mr Casella on behalf of the Gersamia defendants (supported by both Mr Weisselberg and Mr Smith on behalf of their respective clients) both made important applications to amend their respective defences. These applications were in certain respects similar but not identical. In very broad terms, the main point sought to be raised was that the deal in question i.e. the alleged Argentinean Warrants Fraud was in fact part of an attempt by certain individuals employed by the claimants including Mr Lokhov and Mr Popkov to defraud Threadneedle and that for that reason the claimants' claim in these proceedings was tainted by illegality and must fail on the basis of *ex turpi causa*. In my judgment, that was an entirely baseless allegation. In the event, I refused both applications, a decision which was upheld mid-trial during the vacation by the Court of Appeal: see [2013] EWCA Civ 1196.

The alleged bribe to Mr Roman Lokhov

49. Third, although, as I have stated and as is common ground, there never was any binding forward contract with Threadneedle, the claimants say that Messrs Urumov and Pinaev later conspired with Mr Gersamia to try to make one (via switches) with Threadneedle in an attempt to defraud Threadneedle by offloading the warrants onto them – an attempt which was ultimately unsuccessful. In truth, this is not essential to the claimants' claim but it is, at least according to the defendants, an important part of the story. In particular, on the defendants' side, Mr Gersamia candidly admits – and indeed positively asserts – that he was himself party to such intended fraud on Threadneedle for which participation, according to his account, he was offered a substantial bribe by Mr Lokhov (who was, at the material time, the Deputy CEO of OFC) in the course of a dinner at the Umu restaurant in London on 3 June 2011 attended by himself (i.e. Mr Gersamia), Mr Lokhov and Mr Urumov. As described more fully later in this Judgment, both Mr Peto and Mr Casella rely on what they assert is a recording taken in the course of that meeting which, they submit, confirms

that Mr Lokhov did indeed offer Mr Gersamia a bribe – although this is emphatically denied by Mr Lokhov. I consider this further below.

The alleged fraud proceeds and money flows

50. According to Mr Kondratyuk, the plan with Mr Pinaev and Mr Urumov was that the fraud proceeds would be routed from Gemini/Snoras through to a Panamanian company which had been recently acquired jointly by Messrs Urumov, Pinaev and Kondratyuk, i.e. Arcutes Holding Inc ("Arcutes"). In particular, the evidence of Mr Kondratyuk is that the day after the Second Trade i.e. on 10 March, Mr Pinaev telephoned him to say that according to his calculations, the profit on the fraud would be (approximately) US$ 150m, of which US$ 30m was to be given to Gemini and the balance i.e. (approximately) US$ 120m was for the six of them i.e. Mr Pinaev, Mr Urumov, Mr Gherzi, Mr Jemai, Mr Gersamia and Mr Kondratyuk himself; that he (Mr Kondratyuk) was "very pleased" after this conversation because he realised that each of them would receive US$ 20m; that on the date that the Second Trade was finally settled (i.e. 18 March), Mr Pinaev (who was with Mr Urumov in London) confirmed that the proceeds of the Second Trade would be sent to them at Arcutes; and that there were then discussions with regard to the preparation of various documents including a fake "loan agreement" between Gemini and Arcutes as a "cover" which could be presented to the bank to justify the payment.

51. According to Mr Kondratyuk, it was at this stage that Mr Pinaev and Mr Urumov came up with a "plan" which he (Mr Kondratyuk) thought was an attempt to cheat him of his share and which led to a "conflict" between him and Mr Pinaev and Mr Urumov. I have found this part of Mr Kondratyuk's evidence very confusing but, as I understand his evidence, he was told that they were going to have to pay "additional expenses" of approximately US$ 10m which needed to be paid to Mr Gersamia's colleague (whose name he never learned); that this would leave a reduced figure of approximately US$ 110m to be split between the remaining six of them; that the suggested plan was, in effect, that this money (i.e. approximately US$ 110m) would be paid out by Arcutes and split in three equal shares between each of Mr Pinaev, Mr Urumov and Mr Kondratyuk so that Mr Urumov would receive his and Mr Gersamia's share, Mr Pinaev would receive his and Mr Gherzi's share and Mr Kondratyuk would receive his and Mr Jemai's share; and that each of them would then have to settle up with Messrs Gersamia, Gherzi and Jemai respectively. As I say, Mr Kondratyuk's evidence is that he initially thought he was being cheated by this new plan but it is his evidence that after further discussions, he agreed to this.

52. The result, according to Mr Kondratyuk's evidence, is that although he would receive approximately US$ 36.5m, he would have to pay Mr Jemai's share out of this sum. It is Mr Kondratyuk's evidence that Mr Jemai's share was US$ 15.4m leaving for himself approximately US$ 21m. The claimants say that this figure (i.e US$ 15.4m) is approximately 10% of the total fraud proceeds which was the percentage which had originally been agreed with Mr Jemai – although that is difficult to square with other parts of Mr Kondratyuk's evidence including that part of his evidence to the effect that the original plan was that the figure of US$ 120m would be split 6 ways i.e. US$ 20m for each of the main fraudsters. I consider this further below in the context of the claims against Mr Jemai but, for present purposes, it is sufficient to note that, according to Mr Kondratyuk's evidence, Mr Jemai telephoned him and requested him (Mr Kondratyuk) to hold his money for a while because his share (i.e US$ 15.4m)

was too big to be transferred to Mr Jemai's bank account; that it would look suspicious because he was young and did not have an official income; that his mother (i.e. Mrs Jemai) was working out a plan for him to receive his share; and that in the meantime he would ask Mr Pinaev to send an amount of US$ 400,000 for him to his sister's company, Vantax.

53. In any event, it is common ground that, as appears from Figure 5, Gemini paid the sum of US$ 120m in two tranches i.e. US$ 60m on 16 and 18 March respectively to Arcutes; that, as appears from Figures 6, 7 and 9, Arcutes promptly paid approximately US$ 36.5m in cash to each of three Swiss bank accounts held by further recently-acquired offshore companies viz Sun Rose Trading S.A. ("Sun Rose", a Panamanian company beneficially owned and controlled by Mr Urumov and his wife, Ms Balk); Pleator (which was, as stated above, beneficially owned by Mr Pinaev), and Firmly Oceans (a Panamanian company beneficially owned and controlled by Mr Kondratyuk); that, as appears from Figure 8, the sum of approximately US$ 10.1m was paid by Arcutes to Belux (Hong Kong) Co. Ltd ("Belux), a company beneficially owned by Mr Gersamia's brother-in-law, Mr Mamuka Dolidze; and that US$ 400,000 was paid by Arcutes to Vantax, a company incorporated in Belize and said by the claimants to be beneficially owned or at least controlled by Ms Jemai. These monies were all distributed by Arcutes in various tranches starting on 21 March 2011 and finishing by the end of March 2011. The result was that Arcutes' bank account was effectively emptied within a very short period and Arcutes was subsequently dissolved shortly thereafter in May 2011. As appears from Figures 5, 6 and 7, these companies i.e. Sun Rose, Pleator and Firmly Oceans then made further distributions of the fraud proceeds to the families of Messrs Urumov, Pinaev and Kondratyuk, companies and associates, including (so far as relevant in these proceedings) (i) by Mr Urumov to or with the assistance of his wife, Ms Balk; (ii) by Mr Pinaev to or with the assistance of Rossmore and his wife, Marija Kovarska; (iii) by Mr Kondratyuk via Firmly Oceans/Vantax to or with the assistance of Mr Jemai, Jecot and Ms Jemai; (iv) by Mr Gersamia to or with the assistance of Templewood and his father, Mr Gersamia Snr. As appears from Figure 5, the balance of the fraud proceeds (i.e. approximately US$ 30m out of a total of US$ 150m) was distributed by Gemini.

54. As I say, a summary of the flow of monies which the claimants say are all fraud proceeds appears from the Figures agreed by the parties and attached at the end of this Judgment – although I should make plain that the various defendants who received such monies all deny any dishonesty on their part. In particular, they assert that they were unaware that such monies were part of the proceeds of fraud (if such be the case) and that in fact such monies were received by them as part of honest commercial dealings in the form of loans or investments. In support of such case, the relevant defendants rely on numerous documents the authenticity of which is challenged by the claimants and which the claimants say are, in any event, nothing but fakes or "shams" or both all designed to hide money-laundering.

Summary of claims in respect of alleged Argentinean Warrants Fraud

55. The claimants say that they are entitled to recover all or some of their losses from Messrs Urumov, Pinaev, Jemai and Gersamia as well as Ms Balk on various grounds including breach of contract/fiduciary duty, deceit and/or conspiracy. In addition, it is the claimants' case that certain of the other defendants are also liable on the basis that

they dishonestly assisted the alleged fraudsters, in particular by "laundering" or distributing the fraud proceeds or were in knowing receipt of such proceeds; that certain defendants procured the breach of contract by certain other defendants; and that there are further proprietary claims in respect of the fraud proceeds against certain defendants. The various claims are summarised in Table 2.

Mr Urumov	OSL / OFC	Breach of contract	Damages	US$ 150,933,750
	OSL / OFC	Breach of fiduciary duty	Equitable compensation / account of profits	US$ 150,933,750
	OSL / OFC	Dishonest assistance of RP's and SK's breaches of fiduciary duty	Equitable compensation / account of profits	US$ 150,933,750
	OSL / OFC	Conspiracy	Damages	US$ 150,933,750
	OSL / OFC	Deceit	Damages	US$ 150,933,750
	OSL / OFC	Knowing receipt	Account / equitable compensation / damages	US$ 120,000,000
Denning	OSL / OFC	Dishonest assistance of GU's breach of fiduciary duty	Equitable compensation / account of profits	US$ 2,675,000
	OSL / OFC	Procuring GU's breach of contract	Damages	US$ 2,675,000
	OSL / OFC	Knowing receipt	Account / equitable compensation / damages	US$ 2,675,000
Ms Balk	OSL / OFC	Dishonest assistance of GU's breach of fiduciary duty	Equitable compensation / account of profits	US$ 150,933,750
	OSL / OFC	Procuring GU's breach of contract	Damages	US$ 150,933,750
	OSL / OFC	Conspiracy	Damages	US$ 150,933,750
	OSL / OFC	Knowing receipt	Account / equitable compensation / damages	US$ 36,978,000
Mr Pinaev	OSL / OFC	Breach of fiduciary duty	Equitable compensation / account of profits	US$ 150,933,750
	OSL / OFC	Dishonest assistance of GU's and SK's breaches of fiduciary duty	Equitable compensation / account of profits	US$ 150,933,750
	OSL / OFC	Conspiracy	Damages	US$ 150,933,750
	OSL / OFC	Deceit	Damages	US$ 150,933,750
	OSL / OFC	Knowing receipt	Account / equitable compensation / damages	US$ 120,000,000
	Otkritie Bank	Russian law	Declaration, damages	US$ 150,933,750

	OSL / OFC	Russian law	Restitution	US$120,000,000
Pleator	OSL / OFC	Dishonest assistance of RP's breach of fiduciary duty	Equitable compensation / account of profits	US$ 36,998,000
	OSL / OFC	Procuring RP's breach of contract	Damages	US$ 36,998,000
	OSL / OFC	Knowing receipt	Account / equitable compensation / damages	US$ 36,998,000
	OSL / OFC	Russian law	Damages	US$ 36,998,000
	OSL / OFC	Russian law	Restitution	US$ 36,998,000
Rossmore	OSL / OFC	Dishonest assistance of RP's breach of fiduciary duty	Equitable compensation / account of profits	US$ 6,131,000
	OSL / OFC	Procuring RP's breach of contract	Damages	US$ 6,131,000
	OSL / OFC	Knowing receipt	Account / equitable compensation / damages	US$ 6,131,000
	OSL / OFC	Russian law	Damages	US$ 6,131,000
	OSL / OFC	Russian law	Restitution	US$ 6,131,000
Ms Kovarska	OSL / OFC	Dishonest assistance of RP's breach of fiduciary duty	Equitable compensation / account of profits	US$ 36,998,333
	OSL / OFC	Knowing receipt	Account / equitable compensation / damages	CHF 14,720,000 € 1,450,000 US$ 528,861
	OSL / OFC	Russian law	Restitution	CHF 14,720,000 € 1,450,000 US$ 528,861
	OSL / OFC	Russian law: Family Code	Restitution	US$ 36,998,333
Mr Gersamia	OSL / OFC	Dishonest assistance of GU's, RP's and SK's breaches of fiduciary duty	Equitable compensation / account of profits	US$ 150,933,750 (compensation) US$ 10,100,000 alternatively US$ 6,900,000 (account of profits)
	OSL / OFC	Conspiracy	Damages	US$ 150,933,750
	OSL / OFC	Knowing receipt	Account / equitable compensation / damages	US$ 10,100,000 alternatively US$ 6,900,000
Templewood	OSL / OFC	Dishonest assistance of GU's, RP's and SK's	Equitable compensation /	US$ 6,900,000

		breaches of fiduciary duty	account of profits	
	OSL / OFC	Knowing receipt	Account / equitable compensation / damages	US$ 6,900,000
Mr Gersamia Sr	OSL / OFC	Dishonest assistance of GU's breach of fiduciary duty	Equitable compensation / account of profits	US$ 2,750,000
	OSL / OFC	Knowing receipt	Account / equitable compensation / damages	US$ 2,750,000
Mr Jemai	OML / OFL (vicariously liable to OSL / OFC)	Breach of contract	Damages	US$ 150,933,750
	OSL / OFC (or OB in respect of RP's breaches)	Dishonest assistance of GU's, RP's and SK's breaches of fiduciary duty	Equitable compensation / account of profits	US$ 150,933,750 (compensation) US$ 35,800,000 alternatively US$ 15,800,000 (account of profits)
	OSL / OFC	Conspiracy	Damages	US$ 150,933,750
	OSL / OFC	Deceit	Damages	US$ 150,933,750
	OSL / OFC	Knowing receipt	Account / equitable compensation / damages	US$ 35,800,000 alternatively US$ 15,800,000 (received by Jecot on Jemai's behalf)
Jecot	OSL / OFC	Dishonest assistance of SK's breach of fiduciary duty	Equitable compensation / account of profits	US$ 35,400,000
	OML / OFL (vicariously liable to OSL / OFC)	Procuring EJ's breach of contract	Damages	US$ 35,400,000
	OSL / OFC	Procuring SK's breach of contract	Damages	US$ 35,400,000
	OSL / OFC	Knowing receipt	Account / equitable compensation / damages	US$ 35,400,000
Ms Jemai	OSL / OFC	Dishonest assistance of SK's breach of fiduciary duty	Equitable compensation / account of profits	US$ 20,740,000
	OSL / OFC	Knowing receipt	Account / equitable compensation / damages	US$ 20,740,000 CHF 32,205

Part 2: The Law

56. As appears above, the various claims made in these proceedings are advanced on a number of different bases. It is convenient to summarise at this stage the relevant

principles of law applicable to each head of claim as advanced by Mr Berry and which were to a large extent not in dispute.

Deceit

57. The requirements of the action in deceit are well-established: see, for example *AIC Ltd v ITS Testing Services (UK)* [2006] EWCA Civ 1601, [2007] 1 All ER (Comm) 667 and in particular the judgment of Rix LJ at §251-260.

58. First, there must be a clear misrepresentation of fact or law. However, a representation may be either express or implied from conduct; furthermore, adopting the representation of a third party can be sufficient: *Clerk & Lindsell on Torts* (20th Ed) §18-05.

59. Second, the defendant must know that the representation is false or have no belief in its truth or be reckless as to whether or not it is true. But the defendant's motive (e.g. whether he had an intention to cheat or injure the claimant) is irrelevant to his liability in deceit: *Derry v Peek* (1889) 14 App Cas 337, 376 per Lord Herschell; *Angus v Clifford* [1891] 2 Ch 449, 471; *Armstrong v Strain* [1951] 1 TLR 856, 871, both cited by Rix LJ in *ATC Ltd v ITS Testing Services (UK)* [2006] EWCA Civ 1601; [2007] 1 All ER (Comm) 667 §257-258. As stated in *Chitty on Contracts*, Vol 1 §6-048:

> "*The requirement of proof of absence of honest belief does not however mean that the claimant must prove the defendant's knowledge of the falsity of the statement, it is enough to establish that the latter suspected that his statement might be inaccurate, or that he neglected to enquire into its accuracy without proving that he actually knew it was false … If a person takes it upon themselves to make assertions as to which they are ignorant whether they are true or untrue, they must, in a civil point of view, be held as responsible as if they had asserted that which they know to be untrue.*"

60. Third, the defendant must be shown to have an intention that the claimant rely upon the false statement in the manner that causes loss or damage. Further, (i) the relevant intention includes not only the obvious category of a desire by the defendant that the claimant relies on the misstatement, but also where the defendant appreciates that in the absence of unforeseen circumstances the claimant will actually do so: *Clerk & Lindsell* §18-30, citing *Shinhan Bank Ltd v Sea Containers Ltd* [2000] 2 Lloyd's Rep 406; (ii) the representation need not be made directly to the claimant: liability is established if it is made to a third party with the intention that it reaches and induces the claimant (or someone in the claimant's position) to act on it: *Clerk & Lindsell* §18-31; (iii) although it is a question of fact whether in a particular case it was intended that the claimant rely on a false statement, in practice the test is often whether it was in the defendant's interest that he should do so: *Clerk & Lindsell* §18-33.

61. Fourth, it suffices to show that a false representation is a cause of the claimant acting in a certain way. It is not necessary to show it was the cause of the claimant so acting or indeed that it was the main cause: *McGrath, Commercial Fraud in Civil Practice* (2008) §2.49. Further (i) it is no answer to an action for deceit that the claimant might

have discovered the truth by the exercise of ordinary care: it does not lie in the mouth of a liar to argue that the claimant was foolish to take him at his word: *Clerk & Lindsell* §18-37; (ii) the Courts have devised an important presumption of inducement, which operates to the benefit of the claimant. As stated in *Chitty on Contracts* (31st Ed), Vol I, §6-039: "*Once it is proved that a false statement was made which is 'material' in the sense that it was likely to induce the contract, and that the representee entered the contract, it is a fair inference of fact (though not an inference of law) that he was influenced by the statement, and the inference is particularly strong where the misrepresentation was fraudulent. There is no set list of matters that might rebut the presumption which arises from a fraudulent statement. One is to show that the misrepresentee had already firmly made up his mind, but even then the misrepresentation might have induced him not to change his mind*". Thus, the effect of the presumption is to shift the burden of proof on to the defendant that there has been no reliance at all.

62. Fifth, damages for deceit are designed to put the claimant in the position it would have been in had the misrepresentation not been made; and for this purpose it will be presumed that the claimant would not have entered into the transaction in question. See: Lord Steyn in *Smith New Court Securities v Citibank* [1997] AC 254, 283F-G, 284D ("*… it is not necessary in an action for deceit for the judge, after he had ascertained the loss directly flowing from the victim having entered into the transaction, to embark on a hypothetical reconstruction of what the parties would have agreed had the deceit not occurred.*"); and also Hobhouse LJ in *Downs v Chappell* [1997] 1 WLR 426, 441: ("*In general, it is irrelevant to inquire what the representee would have done if some different representation had been made to him or what other transactions he might have entered into if he had not entered into the transaction in question. Such matters are irrelevant speculations: see, for example, United Motor Finance Co. v Addison & Co. Ltd. [1937] 1 All ER 425, 429.*")

63. Sixth, in addition to damages, a claimant may, in certain circumstances, also have a proprietary remedy, for example where the representee has rescinded the relevant underlying contract(s): see e.g. *Lonrho plc v Fayed (No 2)* [1992] 1 WLR 1, 11-12; *El Ajou v Dollar Land Holdings plc* [1993] 3 All ER 717, 734; *Bristol and West Building Society v Mothew* [1998] Ch 1, 23; and *Cadogan Petroleum plc v Tolley* [2011] WHC 2286 (Ch) at §36 per Newey J. See also *Shalson v Russo* [2005] Ch 281 at §122 per Rimer J:

> "*Rescission is an act of the parties which, when validly effected, entitles the party rescinding to be put in the position he would have been in if no contract had been entered into in the first place. It involves a giving and taking back on both sides. If it is necessary to have recourse to an action in order to implement the rescission, the court will make such orders as are necessary to put both contracting parties into the position they were in before the contract was made. There is, however, also a line of authority supporting the proposition that, upon rescission of a contract for fraudulent misrepresentation, the beneficial title which passed to the representor under the contract revests in the representee. The representee then enjoys a sufficient proprietary title to enable him to trace, follow and recover what, by virtue of*

> *such revesting, can be regarded as having always been in equity his own property. This may be an essential means of achieving a proper restoration of the original position if the representor has in the meantime parted with the property and is ostensibly a man of straw unable to satisfy the court's orders for restoration of the original position.*" (emphasis added).

Misrepresentation Act 1967

64. As to the parallel claim for damages under s2(1) of the Misrepresentation Act 1967, I do not propose to engage in a detailed comparison with a claim in deceit. For present purposes, I would simply note that a claim under s2(1) does not require proof of fraud; instead, it must be shown that the representor would be liable to pay damages had he been fraudulent and that the representee has suffered loss as a result. In the context of s2(1), this requires the representee to demonstrate that the representor intended him to act upon the statement as an inducement to enter into the contract; and he did so (*Chitty on Contracts*, 31st Ed §6-028). However, the representor will not be liable in damages under s2(1) if he proves that he had reasonable grounds to believe and did believe up to the time the contract was made that the facts represented were true.

Conspiracy

65. In general, a conspiracy consists of "… *the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means*": see *Clerk & Lindsell on Torts* 20th Ed §24-90 citing *Mulcahy v R* (1868) L.R. H.L 306 at 307 per Wiles J. As to the latter: "*A conspiracy to injure by unlawful means is actionable where the claimant proves that he has suffered loss or damage as a result of unlawful action taken pursuant to combination or agreement between the defendant and another person or persons to injure him by unlawful means whether or not it is the predominant purpose of the defendant to do so.*" *Kuwait Oil Tanker Co SAK v Al Bader* [2000] 1 All ER (Comm) 271 at §106 per Nourse LJ.

Bribery

66. As to the law in relation to the bribery claims, Mr Berry advanced a number of submissions which (subject to one point) I accept and which may be summarised as follows.

67. In civil law, a bribe consists of a promise or payment of commission or other inducement, which is given by a third party to an agent as such, and which is secret from his principal: *Anangel Atlas Compania Naviera S.A. v Ishikawajima-Harima Heavy Industries Co Ltd* [1990] 1 Lloyd's Rep 167, 171 per Leggatt J. The principal is entitled to be confident that the agent will act wholly in the principal's interests. The test for whether a payment or other benefit or a promise of the same amounts to a bribe depends upon whether it puts the agent in a position in which his duties to his principal and his interests might conflict: *Fiona Trust & Holding Corp v Privalov* [2010] EWHC 3199 (Comm). See also *Logicrose Ltd v Southend United FC* [1988] 1 WLR 1256, 1260 per Millett J. This strict rule reflects an understandable repugnance with picking over the fine details of the parties' subjective states of mind when a

secret commission has been paid to an agent. The point is made forcefully by Jacob LJ in *Imageview v Jack* [2009] 1 Lloyd's Rep 436 (CA) at §§6-7:

> "*… The law imposes on agents high standards. Footballers' agents are not exempt from these. An agent's own personal interests come entirely second to the interest of his client.* *If you undertake to act for a man you must act 100%, body and soul, for him. You must act as if you were him. You must not allow your own interest to get in the way without telling him. An undisclosed but realistic possibility of a conflict of interest is a breach of your duty of good faith to your client.* (emphasis added).
>
> *That duty should not cause an agent any problem. All he or she has to do to avoid being in breach of duty is to make full disclosure. Any agent who is doubtful about his position would do well to do just that – the mere fact that he has doubts will generally be a message from his conscience. As … counsel for Mr Jack put it, all an agent has to do is to give the player details of any side-deals that may form part of his transfer arrangements. Sunlight is, after all, the best of disinfectants.*"

68. Thus, the principal is not required – in order to establish liability – to prove any of the following:

i) That the briber acted with a corrupt motive or intention to persuade or influence the agent. This will be presumed in the event of a secret commission to an agent in circumstances where the principal is not informed: see *Tesco Stores Ltd v Pook* [2003] EWHC 823 (Ch) at §§39-45, citing and explaining Romer LJ in *Hovenden & Sons v Millhoff* (1900) 83 LT 41.

ii) That the agent was in fact influenced by the bribe. There is an irrebuttable presumption of inducement: *Hovenden & Sons v Millhoff*, ibid.

iii) That he (the principal) in fact suffered loss as a result of his agent having been bribed. The price paid by the principal will be deemed to have been inflated by at least the amount of the bribe: *Hovenden & Sons v Millhoff*, ibid.

iv) That the briber knew or suspected that the agent would conceal the bribe from the principal. The briber cannot be heard to say that he believed that the agent would disclose the existence of the bribe to his principal: *Grant v Gold Exploration and Development Syndicate Ltd* [1900] 1 QB 233, 249 per Collins LJ.

69. The requirement that the payment or promise of a payment must be given to the agent "as such" does not afford a defence either to the agent or the third party where there is an actual or potential conflict of interest: see *Fiona Trust & Holding Corporation v Privalov* [2010] EWHC 3199 (Comm) at §§1391-1392 per Andrew Smith J:

> "*There is little guidance in the authorities about how the requirement that, if it is to be regarded as a bribe or secret profit, a*

> *payment or promise must be made to, or some other benefit conferred on, an agent as such. However, I cannot accept that this argument provides a defence to the liability of an agent, or of one who pays an agent, where the payment gives rise to an actual or potential conflict of interest. The law imposes what Mummery LJ in Imageview Management Ltd. v Jack [2009] 1 Lloyd's Rep 436, 446 called a "precise and firm line" against payments to agents where they compromise either of the two aspects of the duty to account of an agent or other fiduciary, which were stated by Lord Herschell in Bray v Ford [1896] AC 44, 51-2: "It is an inflexible rule of a Court of Equity that a person in a fiduciary position … is not, unless otherwise expressly provided, entitled to make a profit; he is not entitled to put himself in a position in which his interest and his duty compete.*
>
> *As I see it, often both aspects of the duty to account converge when a bribe is paid to an agent, but a payment that compromises either is treated as a bribe. If the complaint is on the basis that the fiduciary must not benefit from his fiduciary position, the question will arise whether the payment was to the agent or other fiduciary "as such", because the mischief is that the fiduciary must not profit by reason of or in virtue of his fiduciary position. Here the complaint of the claimants is that the benefits by way of holidays and credit cards gave rise to a conflict of interest or the realistic potential for one, and the law does not excuse an actual or potential conflict of interest because it arises from a payment made to the fiduciary in some other capacity and not because he was an agent or other fiduciary: it still regards the payment as a bribe, unless there has been full disclosure.*" (emphasis added)

70. It is unnecessary for a claimant to show that the bribe was given in connection with a particular transaction or series of transactions. The possibility of a conflict between duty and interest might be created by a bribe paid to an agent in order to influence him in favour of the person paying it generally and not directed to any particular matter or intended to influence him in relation to a particular transaction: *Fiona Trust* at §73 per Andrew Smith J; *Novoship* at §109 per Christopher Clarke J.

71. If liability is established, there is a comprehensive choice of remedies available to the principal:

> "*The agent and the third party are jointly and severally liable to account for the bribe, and each may also be liable in damages to the principal for fraud or deceit or conspiracy to injury [sic] by unlawful means. Consequently, the agent and the maker of the payment are jointly and severally liable to the principal (1) to account for the amount of the bribe as money had and received and (2) for damages for any actual loss. But the principal must now elect between the two remedies prior to final judgment being entered: Mahesan s/o Thambiah v Malaysia Government Officers' Co-operative Housing Society Ltd [1979] AC 374, 383.*

> *The third party may also be liable on the basis of accessory liability in respect of breach of fiduciary duty: Bowstead & Reynolds on Agency, para 8-221. The principal is also able to rescind the contract with the payer of the bribe.*" See *Daraydan Holdings Ltd v Solland International Ltd* [2005] Ch 119 at §54 per Lawrence Collins J.

In addition, the principal may also have a proprietary remedy although this is more controversial. For present purposes, I take the law as stated by the Court of Appeal in *Sinclair Investments (UK) Ltd v Versailles Trade Finance Ltd* [2011] EWCA Civ 347 [2012] Ch 453 and summarised in §11 of the judgment of Lewison LJ in *FHR European Ventures LLP v Makarious* [2013] EWCA Civ 17:

> "*… a beneficiary of a fiduciary's duties cannot claim a proprietary interest, but is entitled to an equitable account, in respect of any money or asset acquired by a fiduciary in breach of his duties to the beneficiary, unless the asset or money is or has been beneficially the property of the beneficiary or the trustee acquired the asset or money by taking advantage of an opportunity or right which was properly that of the beneficiary.*"

By way of example, in *FHR European Ventures LLP v Makarious* [2013] EWCA Civ 17, a hotel was purchased by the claimants and 10% of the purchase price was secretly diverted to the defendant, who was acting as the claimants' agent in the transaction. Even though the claimants could not show that the vendor would have been willing to accept the price paid minus 10%, the Court nevertheless held they were entitled to a proprietary remedy in respect of the bribe. The Chancellor explained that because "*in reality the claimants' money funded the commission*" and the actions of the defendant "*diverted from the claimants the opportunity to purchase the hotel at the lowest possible price*", the monies received by the defendant were impressed with a constructive trust: respectively, §105 and §110. See also Lewison LJ at §59 and Pill LJ at §§73-74.

72. The touchstone is that a fiduciary is someone "*who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence*": *Bristol & West Building Society v Mothew* [1998] Ch 1, 18 per Millett LJ. In the employment context, the courts typically look to the employee's contractual obligations and the circumstances of his employment, for example seniority, managerial responsibility, decision-making autonomy, independence and the vulnerability of the employer, which may justify holding the employee bound by a duty of loyalty to the employer: *Helmet Integrated Systems Ltd v Tunnard* [2006] EWCA Civ 1735; *Foster Bryant Surveying Ltd v Bryant* [2007] IRLR 425; *Crowson Fabrics Ltd v Rider* [2008] IRLR 288.

73. Moreover, in circumstances where an individual is employed by and owes fiduciary duties to one company in a group, he may also be held to owe duties to other companies in the same group – indeed, it has been said to be: "… *obvious that if the employee of a parent is required by that parent to work for one of its subsidiaries as a banker handling loans and dealing with its financial affairs, the employee must owe fiduciary duties as much to the subsidiary in connection with the financial affairs that*

the employee is required to handle, as he would to the parent employer in connection with its own financial affairs." *Bank of Ireland v Jaffery* [2012] EWHC 1377 (Ch) at §299 per Vos J.

Dishonest Assistance

74. As to the law in this context (and also with regard to knowing receipt), Mr Berry advanced a number of propositions which I again accept and may be summarised as follows.

75. First, dishonesty is an objective standard: it is not necessary to show that the defendant took a view on the propriety of his own conduct, or that he was aware that his conduct fell below the generally accepted standards of honesty: see *Royal Brunei v Tan* [1995] 2 AC 378 at p386-7 per Lord Nicholls:

> "*Before considering this issue further it will be helpful to define the terms being used by looking more closely at what dishonesty means in this context. Whatever may be the position in some criminal or other contexts (see, for instance, Reg. v. Ghosh [1982] Q.B. 1053), in the context of the accessory liability principle acting dishonestly, or with a lack of probity, which is synonymous, means simply not acting as an honest person would in the circumstances. <u>This is an objective standard.</u> At first sight this may seem surprising. Honesty has a connotation of subjectivity, as distinct from the objectivity of negligence. Honesty, indeed, does have a strong subjective element in that it is a description of a type of conduct assessed in the light of what a person actually knew at the time, as distinct from what a reasonable person would have known or appreciated. Further, honesty and its counterpart dishonesty are mostly concerned with advertent conduct, not inadvertent conduct. Carelessness is not dishonesty. Thus for the most part dishonesty is to be equated with conscious impropriety. However, these subjective characteristics of honesty do not mean that individuals are free to set their own standards of honesty in particular circumstances. <u>The standard of what constitutes honest conduct is not subjective. Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour.</u>*
>
> *In most situations there is little difficulty in identifying how an honest person would behave. Honest people do not intentionally deceive others to their detriment. Honest people do not knowingly take others' property. Unless there is a very good and compelling reason, an honest person does not participate in a transaction if he knows it involves a misapplication of trust assets to the detriment of the beneficiaries. <u>Nor does an honest person in such a case deliberately close his eyes and ears, or</u>*

> *deliberately not ask questions, lest he learn something he would rather not know, and then proceed regardless. However, in the situations now under consideration the position is not always so straightforward. This can best be illustrated by considering one particular area: the taking of risks.*" (emphasis added)

Although it has been suggested that the subjective element of the test requires that the third party realised that by the standards of reasonable and honest people his conduct was dishonest, Mr Berry submitted (and I accept) that the better view is that there is no such requirement: *Twinsectra Ltd v Yardley* [2002] 2 AC 164 at [27] and [36] per Lord Hutton; *Barlow Clowes International Ltd v Eurotrust International Ltd* [2006] 1 WLR 1476 at §15-16, per Lord Hoffmann; *Starglade Properties Ltd v Nash* [2010] EWCA Civ 1314 at §23-31 per the Chancellor of the High Court; *Bank of Ireland v Jaffery* [2012] EWHC 1377 (Ch) at §289 per Vos J. See also: *Lewin on Trusts* (18th Ed) §40-25; *Snell's Equity* (32nd Ed) §30-078; *McGrath* §16.113. Accordingly, as submitted by Mr Berry, it is not necessary to show that the third party took a view on the propriety of his own conduct, or that he was aware that his conduct fell below the generally accepted standards of honesty.

76. Second, in applying the test of dishonesty, the court will look at all the circumstances known to the defendant at the time, and it will have regard to the defendant's personal attributes, such as his experience (e.g. in financial services) and the reason why he acted as he did: *Royal Brunei v Tan*, p391 per Lord Nicholls.

77. Third, there is no need for the claimant to prove that the defendant was aware of the details of the underlying fraud. It suffices if he simply knows that he is assisting the main fraudster to do something he is not entitled to do, and it will be no answer for the defendant to maintain that he thought he was involved in a different dishonest transaction from the one he is actually involved in: *McGrath*, *Commercial Fraud in Civil Practice* §16.114.

78. Fourth, the defendant has the requisite dishonest state of mind if he deliberately closes his eyes and ears, or deliberately refrains from asking questions, lest he learns something he would rather not know, and then proceeds regardless: *Royal Brunei v Tan*, p387 per Lord Nicholls.

79. Fifth, if those requirements are satisfied, the third party is liable: (i) to compensate for the losses resulting from the trustee/fiduciary's breach of duty; and/or (ii) to account for his profits: *Snell's Equity* §30-079–081; *McGrath* §16.118. The defendant's liability is not limited to the loss caused by his assistance but extends to the loss resulting from the relevant breaches of fiduciary duty. In this context, as in conspiracy, it is inappropriate to become involved in attempts to assess the precise causative significance of the dishonest assistance in respect of either the breach of trust or fiduciary duty or the resulting loss: *Grupo Torras SA v Al-Sabah* [1999] CLC 1469, 1667 *per* Mance J (affirmed on this point [2001] CLC 221 at §119 per Robert Walker LJ, Tuckey LJ and Sir Murray Stuart-Smith); *Snell's Equity* (32nd Ed) §30-080.

Procuring / inducing breach of contract

80. Like dishonest assistance, this is a type of accessory liability. The principal differences are that: (i) the primary wrongful act is a breach of contract; and (ii) there is no need to establish dishonesty on the part of the defendant. As appears from *OBG v Allan* [2008] AC 1, the requirements are: (i) the defendant must know that he was inducing a breach of contract; (ii) the defendant must intend to cause a breach of contract; (iii) breach of contract; (iv) the claimant has to show persuasion, procurement or inducement of the contract breaker by the defendant; (v) if the breach procured by the defendant has been such as must in the ordinary course of business inflict damage upon the claimant, it is unnecessary to prove particular damage. See: *Clerk & Lindsell on Torts* (20th Ed) §§24-35 – 24-41, §24-51.

Knowing Receipt

81. In broad terms, a claim for knowing receipt requires the claimant to show the following: "*… first, a disposal of his assets in breach of fiduciary duty; secondly, the beneficial receipt by the defendant of assets which are traceable as representing the assets of the plaintiff; and thirdly, knowledge on the part of the defendant that the assets he received are traceable to a breach of fiduciary duty.*" See *El Ajou v Dollar Land Holdings plc* [1994] 1 All ER 685, 700 per Hoffmann LJ; *BCCI v Akindele* [2001] Ch 437, 448 (CA). As submitted by Mr Berry, it is important to note that the test for knowledge in a knowing receipt claim is lower than it is for dishonest assistance: dishonesty is not a prerequisite of liability, and the question is whether the defendant had such knowledge as to render it unconscionable for the defendant to retain the benefit of the receipt: *BCCI v Akindele* [2001] Ch 437, 455 per Nourse LJ. Second, in certain circumstances a defendant will be liable if he fails to make reasonable enquiries about the circumstances of the receipt: see *Snell's Equity* §30-071:

> "*The defendant must be at fault when he receives the trust property. This justifies his continuing liability to restore its value to the claimant even after he may no longer have the original property to restore by a proprietary claim. Fault means that the defendant must know enough of the facts surrounding the misapplication of trust property to make it unconscionable for him to retain the benefit of his receipt. Earlier tests for fault, which drew subtle distinctions between different degrees of a defendant's awareness, have been abandoned as being excessively refined. The degree of knowledge which might make the defendant's conduct unconscionable varies with the context. This allows the court to set a standard that is appropriate to exigencies of the transaction in question.*
>
> *The essential distinction is between knowledge implying that the defendant was in some degree subjectively aware of the wrongful or unauthorised source of the property he received, and knowledge that would put a reasonable person in his situation on inquiry about the origins of the property. In commercial transactions where there is no customary practice*

> *of making routine inquiries into title and where transactions need to be concluded promptly, the defendant may need to be subjectively aware that he is receiving tainted property before his receipt could be stigmatised as unconscionable. His knowledge of the facts may shade into dishonesty, as that term is now defined. Constructive notice in the formalised sense that that term is used in dealings with unregistered land would be too exacting a standard to apply to the defendant. But in gratuitous transactions, where the defendant has no reasonable justification to rely unquestioningly on the trustee's authority to transfer the property to him, it may be reasonable to impose a duty of inquiry on him. The recipient's knowledge of facts that would put a reasonable person on inquiry might amount to unconscionable knowledge. This standard would be applied to determine whether the defendant was a bona fide purchaser for value who was liable to a proprietary claim to restore the property.*" (emphasis added)

Bona Fide Purchaser for Value Without Notice

82. The circumstances in which this defence to an equitable proprietary claim may be available are set out in *Macmillan Inc v Bishopsgate Investment Trust plc (No 3)* [1995] 1 WLR 978, 1000 per Millett J, citing a passage from *Barclays Bank Plc v O'Brien* [1994] 1 AC 180, 195-196 per Lord Browne-Wilkinson:

> "*The doctrine of notice lies at the heart of equity. Given that there are two innocent parties, each enjoying rights, the earlier right prevails against the later right if the acquirer of the later right knows of the earlier right (actual notice) or would have discovered it had he taken proper steps (constructive notice). In particular, if the party asserting that he takes free of the earlier rights of another knows of certain facts which put him on inquiry as to the possible existence of the rights of that other and he fails to make such inquiry or take such other steps as are reasonable to verify whether such earlier right does or does not exist, he will have constructive notice of the earlier right and take subject to it.*" (emphasis added)

83. As submitted by Mr Berry, the question for the court is whether the particular defendant who relies on this defence is able to demonstrate (for the burden is on him to show that he gave valuable consideration and that he had no notice: see *Lewin on Trusts* (18th Ed) §41-114) that a reasonable person with his attributes should "*either have appreciated that a proprietary claim probably existed or should have made inquiries or sought advice, which would have revealed the probable existence of such a claim*": *Sinclair Investments (UK) Ltd v Versailles Trade Finance Ltd* [2012] Ch 453 at §109 per Lord Neuberger. Thus, the scope of this defence is co-extensive with the scope of liability in knowing receipt i.e. both the proprietary claim and the (personal) knowing receipt claim are likely to stand or fall together.

Burden and Standard of Proof

84. It is, of course, trite law that the burden of proof lies on the claimants. Notwithstanding, it is, in my view, important to emphasise one point which is perhaps obvious viz the case advanced against each of the defendants must be considered separately.

85. As to the standard of proof, it is of course important to emphasise that "suspicion" – however strong – cannot found liability even in a civil case. Although this was not in dispute, there was some controversy as to the standard of proof – although the law is, in my view, quite clear. In broad terms, the submission made on behalf of most of the defendants was that the standard of proof was "high" or that more "cogent evidence" was required for the claimants to make good an allegation of reprehensible conduct. Thus, Mr Peto submitted that the claimants' allegations involved a series of grave accusations against the Urumov defendants and that this therefore imposed a "high evidential burden". In support of that submission, Mr Peto relied upon the passage from the speech of Lord Nicholls in *R H (Minors)* [1996] AC 563, at 586:

> "*The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence.*"

86. Similarly, Mr Casella submitted that more cogent evidence is required to satisfy a tribunal that a person has been fraudulent or behaved in some reprehensible manner on the basis that such allegations are in most cases inherently improbable. In support of that submission, Mr Casella relied upon the passage from the judgment of Denning LJ in *Bater v Bater* [1950] 2 All ER 458, 459:

> "*It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard.*
>
> *Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require for itself a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does*

> *require a degree of probability which is commensurate with the occasion.*"

Mr Casella also relied upon the observation of Teare J in *JSC BTA Bank v Mukhtar Ablyazov & Others* [2013] EWHC 510 at §76:

> "*I have also kept well in mind that although the standard of proof is the civil standard, the balance of probabilities, the cogency of the evidence relied upon must be commensurate with the seriousness of the conduct alleged.*"

87. In similar vein, Mr Smith on behalf of Mr Jemai also submitted (at least initially) that the standard of proof was "high" in a serious fraud, namely that the more serious the allegation the higher the standard of proof must be and that this requirement has a sound rationale: that it is inherently improbable that a person would carry out such conduct.

88. In my judgment, as formulated, these submissions are at the very least confused. As submitted by Mr Berry, the suggestion that the standard of proof might vary with the gravity of the misconduct alleged or even the seriousness of the consequences for the person concerned is, in my view, based upon a common misconception arising in part from an erroneous interpretation of Lord Nicholls' judgment in *Re H* [1996] AC 563: see *Re B* [2009] 1 AC 11 at para 5 per Lord Hoffmann; *Re S-B* [2010] 1 AC 678 at paras 11-13 per Baroness Hale. In a series of decisions of the House of Lords and the Supreme Court following *Re H*, it has been firmly established that:

i) First, there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not: *Re B* at para 13 per Lord Hoffmann.

ii) Second, the proposition that "*the more serious the allegation, the more cogent the evidence needed to prove it*" is wrong in law and must be rejected: *Re S-B* at §13 per Baroness Hale; *Re J* [2013] 1 AC 680 at para 35 per Baroness Hale.

iii) Third, while inherent probabilities are relevant in considering whether it was more likely than not that an event had taken place, there is no necessary connection between seriousness and inherent probability: *Re S-B* at para 12 citing Lord Hoffmann in *Re B* at para 15:

> "*There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children. <u>It would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely.</u>*

> *If, for example, it is clear that a child was assaulted by one or other of two people, it would make no sense to start one's reasoning by saying that assaulting children is a serious matter and therefore neither of them is likely to have done so. The fact is that one of them did and the question for the tribunal is simply whether it is more probable that one rather than the other was the perpetrator.*" (emphasis added).

See also: *Re B* at para 72 per Baroness Hale; *Re J* at paras 14-17 per Baroness Hale; *Jafari-Fini v Skillglass Ltd* [2007] EWCA Civ 261 at para 40 per Carnwath LJ, as interpreted in *Do-Buy 925 Ltd v National Westminster Bank Plc* [2010] EWHC 2862 (QB) at para 49 per Andrew Popplewell QC, sitting as a Deputy Judge of the High Court; *Donegal v Zambia* [2007] EWHC 197 (Comm) at para 276 per Andrew Smith J.

89. As submitted by Mr Berry, the last point is important – or at least potentially important – in this case. I am prepared to accept that in a very broad general sense, it may well be true to say that it is inherently improbable that a particular defendant will commit a fraud. But it all depends on a wide range of factors. For example, if the court is satisfied (or it has been admitted) that a defendant has acted fraudulently or reprehensibly on one occasion, it cannot necessarily be considered inherently improbable that such defendant would have done so on another; or if, for example, the court is satisfied (or it has been admitted) that a defendant has created or deployed sham or false documents, the court cannot assume that it is inherently unlikely that such defendant did so on other occasions. For the avoidance of doubt, I should make absolutely plain that this is not to say that inherent probability is irrelevant. On the contrary, as submitted by Mr Casella, I accept, of course, that the court should take into account the inherent probability of an event taking place (or not taking place) as is made abundantly plain by Baroness Hale in the passage from *Re S-B* quoted above. However, as it seems to me, the court must in each case consider carefully what is – and is not – inherently probable having regard to the particular circumstances – but the standard of proof in civil cases always remains the same i.e. balance of probability.

90. In relation to the standard of proof, there was also some debate concerning the circumstances in which it is proper for the court to draw inferences. In that context, Mr Casella relied in particular on a passage from the judgment of Rix LJ in *JSC BTA Bank v Mukhtar Ablyazov & Others* [2012] EWCA Civ 1411:

> "*It is, however, the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts. It becomes a net from which there is no escape. That is why a jury is often directed to avoid piecemeal consideration of a circumstantial case: R v. Hillier (2007) 233 ALR 63 (HCA), cited in Archbold 2012 at para 10-3. Or, as Lord Simon of Glaisdale put it in R v. Kilbourne [1973] AC 729 at 758, "Circumstantial evidence … works by cumulatively, in geometrical progression, eliminating other possibilities*"".

I readily accept that those observations are particularly apt in the circumstances of the present case.

91. Further, Mr Casella submitted that the citation of criminal cases by Rix LJ is apposite as the criminal courts have grappled with this issue in several cases and in particular whether it is appropriate to draw inferences from evidence whilst not "*eliminating other possibilities*"; and that if such possibilities cannot be eliminated then it is unlikely to be proper to draw an inference against the defendant. In that context, Mr Casella relied upon *R v Moore* (20 August 1992) 92/2101/Y3 ("*It may be helpful for the Judge to address specifically the question whether the proved facts are such that they exclude every reasonable inference from them save the one sought to be drawn … If the proved facts do not exclude all other reasonable inferences then there must be a doubt whether the inference sought to be drawn is correct*"); and also *Teper v R* [1952] AC 480: ("*It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.*"). Although it is, of course, important to bear in mind that these are criminal cases where a higher standard of proof applies, I also readily accept Mr Casella's broad submission based upon these cases that the court should generally take great care when assessing whether or not inferences can properly be drawn in any particular circumstances. Further, I would emphasise yet again the importance of avoiding a piecemeal consideration of a circumstantial case.

Part 3: The Evidence

92. Before considering the detailed allegations, it is convenient to say something in broad terms about the evidence in this case. As set out below, the parties all served various witness statements and called various witnesses in support of their respective cases. In addition, in the usual way, there was a very substantial quantity of contemporaneous documents which had been disclosed by the various parties, included in the voluminous trial bundle and, by agreement and in the usual way, constituted evidence including evidence of the truth of what is stated in the documents. Such documents included not only copies of documents and emails but also transcripts of telephone calls and "chats" as recorded by "Bloomberg" which is an electronic communication system frequently used by traders and others in the financial services industry. In addition, there were transcripts of previous hearings in this court when certain of the defendants had been cross-examined in relation to their asset disclosures pursuant to previous court orders. However, it is important to note that there was a considerable number of documents which had been disclosed but which were said by one or more of the parties to be a forgery or a "sham" or both.

93. In addition, there was "evidence" (in the form of documents and other objects) emanating from the criminal proceedings in Switzerland that I have already referred to. These proceedings were opened in November 2011 following a money-laundering notification to the Swiss authorities made by Bordier Bank ("Bordier"), the bank that in March 2011 received US$ 120m of what the claimants say were the fraud proceeds on behalf of Messrs Urumov, Pinaev and Kondratyuk. The claimants themselves also filed a criminal complaint in Switzerland in late November 2011. In those proceedings being conducted by the Geneva prosecutor M Tappolet, various of the defendants (in particular Mr Kondratyuk, Mr Pinaev, Mr Jemai and Mrs Olessia Jemai) have been subject to fraud and money-laundering charges. As stated above, Mr

Kondratyuk ultimately pleaded guilty. He was sentenced to 3 years imprisonment and was released in April 2013, having been in custody for 17 months. As the claimants are a civil party (partie civile) to the Geneva prosecution, they have access to the Swiss court file, including documents produced by witnesses and third parties and the minutes of hearings that have been conducted to date. The minutes are summaries prepared by the Geneva prosecutor on the evidence that has been adduced. At the end of each hearing the minutes are signed by all of the participants.

94. It is important to note that the existence of these parallel criminal proceedings has presented some not insignificant challenges to the proper management of the present proceedings. For example, the Geneva prosecutor has obtained certain documents from certain of the defendants and other third parties (including, for example, what have been referred to as the "Hinduja documents") which have only been released to the claimants from time to time in the course of this trial. In accordance with the continuing duty of disclosure, these documents have then been provided by the claimants to the defendants during the course of the present proceedings. I should make plain that the late disclosure of these documents is not a criticism of the claimants. However, this dribbling disclosure has caused practical difficulties in the management of these proceedings which has been particularly challenging. There have been other related difficulties e.g. with regard to a laptop that was used by Mrs Jemai and which was seized by the Swiss prosecutor. At a very early stage of the trial, it seemed to me that the contents of that laptop (in particular the metadata in relation to certain documents which were produced or at least stored on that laptop and which are said to be forged) would at least potentially be highly relevant to certain issues in these proceedings. In the event, the laptop itself remains with the Swiss prosecutor and, it would seem, will not be released. Pursuant to an order I made early in the trial, attempts were at least made to obtain the information stored on the laptop including metadata by transferring such information on to a data-stick. This was supposedly done but in the course of such exercise, it would appear that certain information has mysteriously disappeared. I revert to this further below.

95. In addition, I should mention the existence of certain other documents and objects which were seized by the Swiss prosecutor as part of the proceedings in Switzerland and which are said to be of importance in the present proceedings. These include in particular the following:

i) Hard copy documents and USB sticks (including some 60 supposed "contracts" as listed by the claimants in Schedule B to their written closing submissions), which were found in what has been referred to as the "Dunant box" which was "seized" by the Swiss prosecutor in the course of the Swiss proceedings. This is (or at least was) a safe deposit box at Bordier in Geneva in the name of "Dunant International SA", the named 3rd defendant ("Dunant"). Dunant is a Panamanian company with bearer shares. According to Mr Urumov, he acquired it at the suggestion of Bordier in order to separate his personal and business assets, although the claimants say that this explanation is implausible (at best) because he already had various accounts in the names of Denning, Sun Rose, PU Incorporated ("PUI"), Tenway (and no doubt others) and the Sun Rose account was entirely emptied into the Dunant Bordier account by mid-May 2011; that in any event, the documents show that it was Ms Balk who organised their acquisition of Dunant through Mr

Giovanna of Bordier; and that it can safely be inferred that the reality is that Dunant was established better to disguise the trail of the fraud proceeds: not only was it incorporated in a notoriously opaque jurisdiction (i.e. Panama) but its bearer shares meant that there was no corporate record of its beneficial ownership, and its only assets came from Sun Rose, which in turn were derived from cash deposits. In any event, there is no doubt that Dunant was, at all material times, beneficially owned by Mr Urumov and/or Ms Balk and that this storage box was, in effect used by them. This is important because the claimants say that many of the supposed "contracts" contained in the Dunant box were sham documents which strongly support their case in these proceedings.

ii) A "digipass" found by the Swiss prosecutor in a bag which the claimants say belonged to Ms Jemai and must have been used by her to operate a bank account in the name of Vantax (the 16th defendant) in Latvia for money-laundering purposes and, in particular, to launder a major portion of the alleged proceeds of fraud in this case.

iii) A document found by the Swiss prosecutor in Mr Jemai's room in Mrs Jemai's apartment which, on its face, appears to have been prepared by Mr Urumov and which sets out in some detail what can best be described as an aggressive "defence strategy". In particular, the claimants say that the document shows that some at least of the defendants (including, in particular, Mr Urumov, Mr Pinaev, Mr Kondratyuk and Mr Jemai) agreed at a relatively early stage on a deliberate strategy to make dishonest accusations against Otkritie of criminal conduct in an attempt to scare Otkritie off this litigation through fear of adverse publicity or regulatory or criminal investigations. In particular, the claimants say that the main element of this strategy was to allege attempted fraud by Otkritie on Threadneedle culminating (the claimants say) in the forlorn attempts to backdate it to March 2011 and raise a defence of *ex turpi causa*, as referred to earlier in this judgment. Further, as part of this strategy, the claimants draw attention to what they say are Mr Urumov's libellous allegations to a journalist of murder by Otkritie and cover up of murder by the claimants' solicitors, Hogan Lovells; and Mrs Jemai's libellous allegation of kidnap by Otkritie of Mr Rahimov, which allegations were repeated under an affirmation of truth. In my judgment, these are most outrageous allegations for which there is not a scrap of evidence.

96. Quite apart from the documentary disclosure that has been provided in these proceedings, it is also important to note that there have been and remain significant "gaps".

97. On the claimants' side, it is extremely regrettable that the claimants failed in a number of respects to give timely disclosure of certain documents, leading to unfortunate late disclosures and the recall of some of their witnesses in the course of the trial. I dealt with this in a ruling in the course of the trial; and it is unnecessary to repeat what I said then. For present purposes, it is sufficient to note that it is plain that the disclosure exercise on the claimants' side (including both e-disclosure and telephone recordings) has been huge and testing not least because of the compressed timetable to trial (less than 2 years from the discovery of the alleged frauds until the commencement of the trial); that the claimants admitted mistakes in the disclosure

process, apologised, explained the reasons and repeated the apology; and that although the claimants' failures in the disclosure process were disruptive to the conduct of the trial, I am satisfied that such failures were inadvertent and have been cured.

98. By contrast, it is plain that all of the defendants have committed and persisted in deliberate non-disclosure of important documents. A non-exhaustive schedule of some of these "gaps" was provided to the court in the form of a schedule (i.e. Schedule C) attached to the claimants' written closing submissions along with a list of the electronic devices which various defendants say have been lost or are inaccessible, thus preventing access to native versions of electronic documents and their metadata (as summarised in Schedule D attached to the claimants' submissions). I do not propose to set these out at length. To do so would further lengthen what is otherwise a very long judgment. For present purposes, it is sufficient to note what, in my view, are serious examples of such non-disclosure:

i) Non-disclosure by the Urumov defendants of any of the documents subsequently found by the Swiss Prosecutor in the Dunant safe deposit box as listed in Schedule B to the claimants' closing submissions.

ii) Non-disclosure by Mr Urumov of the phone records, particularly for March 2011, for his primary personal mobile number (07957 352109). This was demonstrably his number (or at least one of his numbers) as he admitted in cross-examination although he claimed to have left the phone at home when in hospital. However, it is manifest that Mr Pinaev called that phone number 16 times on the critical day, 9 March 2011. The claimants say that proper disclosure by Mr Urumov would have exposed his lies, proved further extensive direct phone contact with other conspirators (especially on 9 March), and contradicted his false defence of lack of involvement in the First and Second Trades and his false evidence of loss of voice.

iii) Non-disclosure by Messrs Urumov, Pinaev and Jemai of the phone records for any of their other personal mobile telephones, including those with the various numbers listed (for example) in Mr Gersamia's electronic phone book under the names "*Chef*" and "*Sidekick*" etc.

iv) Non-disclosure by Messrs Urumov, Pinaev and Jemai of their personal emails, particularly for February and March 2011 when it is plain that they had many personal email accounts. No emails from these were disclosed by them.

v) Mr Pinaev's failure to disclose any of his purported agreements with Tarmilona.

vi) Non-disclosure by Jecot of hard copy and electronic copy documents. The Swiss authorities seized Jecot documents and computers, but they remained in Jecot's ownership. Quite apart from Mrs Jemai's failure to provide proper disclosure in relation to these documents (which, in my judgment, she could have done if she had taken the proper steps), Mrs Jemai accepts that Jecot has been unable to give proper disclosure *inter alia* because she admits that she deliberately tried to destroy the hard drive of Jecot's computer server containing important documents with a hammer (after commencement of these

proceedings) purportedly to avoid its confidential information being obtained by debt collectors. In my judgment, that explanation is disingenuous: the very strong inference to be drawn from this extraordinary behaviour is that she was seeking to destroy evidence of nefarious conduct on behalf of Jecot, herself and others including evidence relevant to the present proceedings.

vii) Mr Gersamia Snr's 'lost' computer.

99. On behalf of the claimants, there were served statements from the following individuals all of whom gave oral evidence:

i) Mikhail Belyaev. Former chairman of OB's Board of Directors [Days 6, 7].

ii) Vadim Belyaev. Chairman of OFC's Board of Directors. [Days 3, 4, 17].

iii) Roman Lokhov. Former Deputy CEO of OFC and former CEO of OSL and of Otkritie Capital or Investblock. Currently the Deputy CEO and Head of Global Markets and Investment Banking at BCS Financial Group [Days 8, 9, 36].

iv) Dmitriy Popkov. A member of the Board of OFC, having previously been a member of the management board of OB [Days 5, 6, 8 37].

v) Anatoliy Predtechensky. A member of the management board of OB Bank and former Chief Risk Officer at OFC [Day 10].

vi) Sergey Kondratyuk. Former employee of Otkritie Bank [Days 12, 13, 14, 15 – by videolink from Paris].

vii) Nikolay Katorzhnov. Head of Repurchase Transactions (REPO) at OSL [Day 17].

viii) Dmitry Romaev. The First Deputy Chairman of the Managing Board and CFO of OFC [Day 11, 17].

ix) Nipun Ramaiya. A former employee of OSL's FIT. [Day 17].

x) Jamil Mufti. A former employee of OSL's FIT [Day 17].

xi) Alessandro Gherzi. A former employee of OSL's FIT [Days 15, 16, 36].

xii) Alastair Tulloch. An English solicitor (partner) in the firm of Tulloch & Co, company secretary of Gemini Investment Fund Ltd [Day 16].

xiii) Elaine Penrose. An English solicitor (partner) in Hogan Lovells who took a witness statement from Mr Jemai in November 2011 [Day 17].

xiv) Elizabeth Seborg. An English solicitor and partner of Byrne & Partners, Jecot's solicitors, who attended pursuant to a witness summons [Days 34, 37].

100. On behalf of the defendants, there were served statements from the following individuals all of whom gave oral evidence:

i) Georgy Urumov. The 1st defendant and former employee of OSL's FIT [Days 18, 19, 20, 21].

ii) Yulia Balk. The 2nd defendant and Mr Urumov's wife [Days 35, 36].

iii) Ruslan Pinaev also known as Ronen Averbuh. He is the 5th defendant and former employee of OB [Days 21, 22 – by videolink from Israel].

iv) Marija Kovarska also known as Miriam Averbuh and wife of Pinaev, the 19th defendant [Day 23 – by videolink from Israel].

v) Vladimir Gersamia. The 10th defendant. A foreign exchange trader and the former Fund Manager with responsibility for Emerging Markets at Threadneedle Asset Management Ltd [Days 23, 24, 25].

vi) Teimuraz Gersamia. The 11th defendant and also referred to as Mr Gersamia Snr, the father of Vladimir Gersamia [Day 26 by videolink from the Netherlands].

vii) Yevgueni Jemai, also known as Eugene Jemai and Yevgueni Parsins, i.e. the 13th defendant. During the relevant period, Mr Jemai was an employee at OML [Days 25, 26, 27, 28].

viii) Irina Jemai. The 15th defendant and sister of Mr Jemai [Days 29, 37].

ix) Olessia Jemai. Mother of Yevgueni, Irina and also Nora Jemai; majority shareholder, sole director and controller of Jecot [Days 30, 31, 32].

x) David Earlam. A self-employed consultant in the cotton sector and business contact of Mrs Jemai [Day 33].

xi) Miguel Oural. A partner in the Swiss Law firm, Lenz & Staehelin and lawyer for Mr Jemai [Day 28].

xii) Kamandar Nasibov. An Azeri lawyer acting for Jecot [Day 34].

xiii) Dmitry Kamotesov. A person who claimed to be a shareholder of Jecot [Day 33].

xiv) Zeng-Ren Peng. An Investment Manager for a Private Investment Group and friend of Mr Jemai [Day 27].

101. In addition, the parties relied on various other witness statements as hearsay evidence. The parties also served various expert reports on a number of topics including handwriting, forensic IT, Russian Law and market trading. By agreement, these reports were put in evidence although no experts gave oral evidence apart from Mr Kasapis on behalf of the Urumov/Pinaev defendants in relation to market trading. I should mention that his counterpart, Mr Maximino, was due to give evidence but in the event, the claimants decided not to tender his evidence.

102. So far as the claimants' witnesses are concerned, I have already referred specifically to Mr Kondratyuk and Mr Gherzi. I also comment specifically on the evidence of Mr

Mufti and Ms Mujagic in the course of considering the alleged Sign-On Fraud. I should specifically mention Mr Lokhov and Mr Popkov who were both cross-examined at some length. As to Mr Lokhov, I have already referred above to the assertion that he offered Mr Gersamia a bribe in particular at the Umu restaurant in June 2011. I confess I have found this part of the case particularly problematic: I consider the evidence – and set out my conclusions in relation to such assertion – below. As Mr Casella recognised, that allegation is not directly relevant to any pleaded issue although I accept that it is potentially relevant to the credibility of Mr Lokhov. However, I should make plain that even if that allegation were true, I have taken such possibility into account and I am satisfied that it would not ultimately affect my conclusion with regard to the rest of Mr Lokhov's evidence (which I found honest and compelling) nor any other conclusion which I have reached. As to Mr Popkov, I should note that not only was he directly involved in relevant events in 2010 and 2011 but that he has also been the individual who has been largely responsible within Otkritie for handling the present claims. It is fair to say that certain parts of his evidence were less than clear for reasons which were, in my judgment, not his fault and which I explain briefly later in this Judgment. However, I should emphasise that I also regarded him as an honest witness who gave his evidence honestly and to the best of his ability. I also considered all the other witnesses who were called to give evidence on behalf of the claimants to be honest and that they gave their evidence honestly and to the best of their ability – although that is not to say that I necessarily accept the entirety of their evidence.

<u>Part 4: The Alleged Sign-On Fraud</u>

103. At the beginning of 2010, Otkritie's main FIT was in Moscow. It was headed by Mr Sergeev, although he had limited knowledge of the international markets and his English language skills were not (as he explains) of the requisite standard. Mr Kondratyuk was a senior member of the team, responsible for proprietary trading. Other members of the FIT included Mr Khazan (Head of FIT Sales) and Mr Kikhaev (Head of Domestic Sales). At that stage, the business of the Moscow FIT was mostly domestic; they did not have international experience or access to international clients. Management's intention was to expand and to develop Otkritie's FIT capabilities in London, which was the leading market alongside New York, and to build an agency (as opposed to a proprietary) business which was a lucrative area. Meanwhile, Mr Urumov was employed in London as a trader at Knight with his team consisting of Mr Gherzi, Mr Mufti, Ms Mujagic and Mr Ramaiya.

104. According to the evidence of Mr Kondratyuk: (i) Mr Urumov and Mr Pinaev called him in early summer 2010 with a proposal to persuade Otkritie to recruit Mr Urumov and his team at Knight for a very substantial sign-on fee (i.e. US$ 50m) which would then (after deduction of at most US$ 2m for Mr Urumov's team members) be shared out amongst the three of them; and (ii) he (i.e. Mr Kondratyuk) agreed with such proposal. Mr Pinaev and Mr Urumov both deny that they ever made or agreed to such proposal. However, Mr Pinaev does at least accept that soon after he joined Otkritie, it was he who decided to introduce Mr Urumov to Mr Khazan and Mr Sergeev; and Mr Urumov also accepts that it was Mr Pinaev who introduced him into the Moscow FI team. None of this is perhaps surprising given that Mr Urumov was an old friend of Mr Pinaev (they were at university together in London, Mr Pinaev had been at school in Switzerland together with Mr Urumov's wife, Ms Balk, and Mr Pinaev had

previously worked with Mr Urumov's brother, Tamerlan). They were also business associates and were working together to set up Quantum Leap, an investment fund to be based in Luxembourg. However, what is noteworthy is that their personal and professional connections were kept secret from Otkritie's management.

105. Thereafter, the consistent evidence from many of the claimants' witnesses including Mr Sergeev, Mr M. Belyaev, Mr Kondratyuk, Mr Popkov and Mr Lokhov (which I accept) is that both Mr Kondratyuk and Mr Pinaev in effect lobbied for the recruitment of Mr Urumov and his team, emphasising that it had a good reputation, high profitability and extensive client connections and that the cost of recruitment would be justified by the profits that would be generated. Even so, it was Mr Lokhov's evidence that although Mr Sergeev had suggested to him that the cost of recruiting Mr Urumov's team might be US$ 40-50m, he (i.e. Mr Lokhov) thought that this was an absurd figure.

106. Meanwhile, during this period, it is Mr Kondratyuk's evidence that Mr Sergeev said that Otkritie would not be able to pay US$ 50m; and that he (i.e. Mr Kondratyuk) subsequently spoke to Mr Urumov and Mr Pinaev when Mr Urumov suggested mentioning a sum of US$ 25m to Otkritie with each member of the Knight team receiving US$ 5m.

Coq d'Argent

107. Thereafter, it is common ground that in mid or late September 2010, Mr Lokhov met Mr Urumov in London at a dinner at the Coq d'Argent. There are no contemporaneous notes or minutes of that meeting. For present purposes, it is important to note that it is Mr Lokhov's evidence that at that dinner Mr Urumov told him that (i) there were 5 people (including Mr Urumov himself) in the Knight team, each of whom had a key position covering different aspects of emerging markets; (ii) each member of the team was on a guarantee of US$ 5m p.a.; and (iii) they would require equal sharing of any sign-on fee to compensate for loss of their guarantees. All of this is denied by Mr Urumov.

Late September/early October 2010

108. Following the dinner at the Coq d'Argent, it is common ground that Mr Lokhov returned to Moscow. Thereafter, Mr Urumov's evidence is that he spoke to Mr Lokhov several times early the following week; that he told him that he was prepared to explore the possibility of moving over to OSL; and that they gradually "firmed-up" on the details of what he (i.e. Mr Urumov) describes as "my arrangement" including the possibility of other members of the Knight team moving to OSL. On the claimants' side, Mr Lokhov's evidence is that after he returned to Moscow he spoke to his colleagues, in particular Mr Popkov and Mr M Belyaev, about the recruitment of the Knight team. In particular, he says he confirmed to Mr Popkov that whilst Mr Urumov and the Knight team looked a "good fit", it would be completely unacceptable to pay US$ 50m to recruit them.

109. Following these internal discussions, Mr Lokhov says that he spoke to Mr Urumov and invited him to come to Moscow, an invitation which was confirmed in an e-mail which he (i.e. Mr Lokhov) sent to Mr Urumov early in the morning on the 1 October 2010 thanking him for "*an interesting meeting in London*" and stating (in translation)

as follows: "*I would like to invite you to Moscow to meet a few key people and [the] shareholders and make a proposal [an offer]. Would you be able to come the week of the 11th of* [October] …" (The bracketed words are alternative translations). The "proper meaning" of this email, Mr Urumov says, is that he was being invited to come to Moscow so an offer could be made to him. That is disputed by the claimants. In particular, they say that is simply not what the email says. Instead, the claimants say that by this email, Mr Lokhov was inviting Mr Urumov to go to Moscow and to make a proposal (i.e. Mr Urumov was to sell his team and suggest a price) – which is exactly what happened; that it does not say an offer would be made to Mr Urumov; that no such offer was made; and that it would be most surprising if Mr Lokhov had made such a suggestion. In any event, Mr Urumov responded later that same day confirming acceptance of the invitation.

110. Mr Urumov's evidence is that he then spoke to Mr Gherzi who was, according to Mr Urumov "dismissive" and who made it clear that he was not at all attracted by the prospect of a move to a Russian bank and thought it highly unlikely that Otkritie would meet his (i.e. Mr Urumov's) expectations; and also to the other members of his team, telling them that he promised that he was aware of what they had invested in Knight and would not commit them to anything without further discussions.

111. Later that evening i.e. on 1 October 2010, Mr Popkov met Mr Urumov briefly at a social function in London following which he told Mr Lokhov that he (Mr Popkov) thought that Mr Urumov was a good guy and seemed to be well known in the market.

Moscow Meeting – 11 October 2010

112. It is common ground that pursuant to the invitation, Mr Urumov subsequently flew to Moscow for the scheduled meeting which did indeed take place on 11 October 2010. In addition to Mr Urumov, those attending on behalf of Otkritie included Mr V Belyaev, Mr M Belyaev, Mr Lokhov and Mr Popkov.

113. There is much dispute about what happened at that meeting and unfortunately there are no contemporaneous notes or minutes. As summarised in Mr Peto's final submissions, the case advanced on behalf of Mr Urumov is that his recruitment was agreed at the meeting of 11 October 2010; that in particular Otkritie made Mr Urumov a firm offer at that meeting which he accepted and understood to be the terms upon which he would join and the terms upon which he would endeavour to bring over his team from Knight; and that as a sign-on bonus for himself and his team, it was agreed that he would receive US$ 25m for himself (i.e. Mr Urumov) to distribute as he saw fit.

114. The claimants do not accept this version of events. On the contrary, it is their case that although certain discussions did indeed take place with regard to the employment of Mr Urumov and his team, no offer by Otkritie, no agreement in principle and no contract was made at this meeting. Relying on the evidence of the various individuals who attended the meeting on behalf of Otkritie, the claimants say that the relevant events on 11 October can be summarised as follows:

i) There was a short preliminary meeting with Mr Lokhov and Mr Popkov but the key meeting was the one with Otkritie's senior executives (which Mr Lokhov and Mr Popkov also attended).

ii) To begin with, Mr Urumov delivered a sales pitch: he explained the work done by the Knight team, their relationships with big players in the market and how they could add value for Otkritie.

iii) Crucially, Mr Urumov reiterated that the members of the Knight team were each on a guaranteed annual package of US$ 5m. Initially, he suggested the team was looking to be paid US$ 50m in total to move i.e. double their then present (alleged) annual income. This was not persuasive and Mr Urumov was told that, subject to shareholder approval, Otkritie might be prepared to pay US$ 25m, divided equally amongst the five team members.

iv) Mr Urumov identified the members of the team who would be moving with him and explained their roles.

v) Mr Urumov said that he would check with the other members of the team whether they would be happy for their sign-on payments to be made offshore.

vi) One of the directors and major shareholders of Otkritie, Boris Mints, could not be present at the meeting and it was made clear to Mr Urumov that Otkritie's management needed to discuss the matter further before entering into a binding commitment. Moreover, it was only on 11 October that Mr Urumov provided the names of referees to whom Otkritie could speak, so there were still further enquiries to be made; and, as Mr Urumov explained in the meeting, he had to talk to his team.

Events following the Moscow Meeting

115. On the following day, i.e. early in the morning London time on 12 October, there is a cryptic Bloomberg chat between Mr Pinaev and Mr Kondratyuk where Mr Pinaev says to Mr Kondratyuk: "*Boss*"; Mr Kondratyuk then responds: "*yes chief*"; Mr Kondratyuk then says: "*Boss, I am very worried about Urumov*"; and Mr Pinaev then responds finally before leaving the chat room with: "*Me too*".

116. On the claimants' side, the evidence of Mr Lokhov is that following the meeting on 11 October, he took steps to get further references for the Knight team; and that following further internal discussions and relying upon the various representations that had been made by Mr Urumov, a decision was taken in particular by Mr V Belyaev that a formal offer should be made, which Mr Lokhov duly did by phone on 13 October, offering Mr Urumov and his team a sign-on fee of US$ 25m with US$ 5m to be paid to each member. According to Mr Lokhov, Mr Urumov said he would go away and think about this and speak to the other members of the team and revert – which Mr Urumov did shortly thereafter confirming that the team was happy to move with him.

Discussions between Mr Urumov, Mr Kondratyuk and Mr Pinaev

117. The claimants say that it must have been shortly after such conversations that Mr Pinaev and Mr Kondratyuk had what would seem to be an important Bloomberg chat starting at 9.14 am on 13 October. This chat contains extremely rude language which I do not propose to quote verbatim in this judgment. For present purposes, it is sufficient to note that the chat indicates from the entries at 10.35 am and following

that both Mr Pinaev and Mr Kondratyuk were extremely excited about certain news. The language used is in certain respects somewhat cryptic but it is plain that Mr Pinaev tells Mr Kondratyuk that another unidentified individual referred to only as "he" said that Mr Popkov had called him and that "*… everything is ******* awesome … they are taking him* ..." to which Mr Kondratyuk responds: "*… he called him in my presence and told - we are going to give you an answer by Tuesday …*" The claimants say that this is and indeed can only be a reference to Mr Urumov joining Otkritie. However, this was emphatically denied by Mr Pinaev in cross-examination. In particular, it was Mr Pinaev's evidence that Mr Kondratyuk was not referring to Mr Urumov at all in this part of the Bloomberg chat but was rather referring to the hiring of another individual whom Mr Pinaev identified as Melton Plummer or some other new trading assistant or perhaps Mr Jemai. Further, it was Mr Pinaev's evidence that this could not be a reference to Mr Urumov because Mr Urumov's employment had already been agreed on 11 October.

118. Be that as it may, the evidence of Mr Urumov is that he received a call from Mr Pinaev shortly after the meeting in Moscow which Mr Urumov says was on either 11 or 12 October. In summary, it is Mr Urumov's evidence that Mr Pinaev asked him about how the meeting with Otkritie's shareholder had gone; that Mr Pinaev told him that he (Mr Urumov) had to meet his superior, Mr Kondratyuk; and that they agreed that such meeting should take place the following day. As to that meeting, Mr Urumov's evidence is, in summary, that Mr Pinaev and Mr Kondratyuk asked him to confirm the terms that he had agreed with Otkritie which he did; that Mr Kondratyuk then said that such terms meant that the remuneration opportunities available to him and his team (including Mr Pinaev) were "decimated"; that if he (Mr Urumov) was not able to offer "some sort of compensation" then he (Mr Kondratyuk) might as well look to move himself; and that Mr Pinaev supported those views. It is Mr Urumov's evidence that he then asked them what they had in mind and that following a "short negotiation", he (Mr Urumov) conceded that he should pay them about 50% of the sign-on fee after the deduction of what he anticipated would be due to the members of the Knight team if they transferred. The evidence of Mr Pinaev is broadly to similar effect although this explanation of the sequence of events is, as I have already noted, contrary to the evidence of Mr Kondratyuk to the extent that his (Mr Kondratyuk's) evidence is that the agreement that Mr Urumov should split the anticipated sign-on fee between them had been agreed at a much earlier stage and, in particular, long before the meeting on 11 October. According to Mr Urumov, he was very disappointed about this turn of events as it meant he would lose a very substantial sum of money. However, his evidence was that he knew enough of business in Russia not to be completely surprised; and that he did not think that it was a matter which need concern Otkritie since the payments were being made from money to which he was entitled.

Discussions between Mr Urumov and his team members

119. Thereafter, it is Mr Urumov's evidence that following his return to work in London on 18 October 2010, he sought to establish whether members of the Knight team were prepared to move and on what terms; that he began the process of meeting each member of the team individually when he explained in some detail where matters stood; that his primary objective was to attract them to move to OSL with him; that he disclosed to the team members that Otkritie was paying a total sign-on bonus of US$

25m; that he negotiated with each team member about how much they might receive in sign-on fees; that he was "solely responsible" for such negotiations and that OSL was not involved in them at any stage; that in the event each of the other four members of his team agreed to move with him to Otkritie; and that in due course, Mr Urumov agreed with each of the members of the team separate sign-on fees that he would pay each of them viz (i) Mr Mufti – US$ 500,000; (ii) Ms Mujagic – US$ 750,000; (iii) Mr Ramaiya – US$ 1m; and (iv) Mr Gherzi – US$ 2.5m. As appears further below, all agreed to have their sign-on payments received offshore, apart from Mr Ramaiya. It is common ground that Otkritie was unaware of these negotiations and agreements between Mr Urumov and the other team members.

Further discussions between Mr Lokhov and Mr Urumov

120. It is also common ground that there were further discussions between in particular Mr Lokhov and Mr Urumov with regard to formal arrangements and contractual documentation although there are important disputes as to the nature and scope of such discussions. On the claimants' side, it is Mr Lokhov's evidence that he told Mr Urumov that Otkritie would need bank details for the US$ 5m sign-on payments to be made to each of the five members of the team; that Mr Urumov said that he would handle all of the payments and that the payments might be made to an offshore company rather than to personal accounts; that Mr Lokhov told him that he was relaxed over this provided that Otkritie had confirmation from each trader as to where the monies were to be paid; that Mr Urumov asked him whether it would be possible for the payments to be made to a single company that he had opened because he did not think the other team members had offshore accounts and it would take too long to set these up; that Mr Lokhov then told Mr Urumov that he had no problem with this provided all of the team agreed and that each person had signed an agreement confirming their receipt of US$ 5m and directing Otkritie to pay the individual's sign-on fee to a particular bank account; and that it was following such discussions that Mr Lokhov received an email from Mr Urumov on 22 October at 6.22 am London time giving the personal details of the team (viz full names and dates of birth) as well as the bank details of a company called Tenway International Ltd ("Tenway") at Clariden Leu Ltd (a private bank), in Switzerland. (It is common ground that Tenway is an offshore company registered in the BVI and beneficially owned by Mr Urumov.) Thereafter at 8.23 am London time, Mr Lokhov responded by email to Mr Urumov asking (as translated from the original Russian): "*Can you please send me the distribution between the people. 5 for everyone?*" A few minutes later, at 8.39 am London time, Mr Urumov responded (as translated from the original Russian): "*Yes, 5 for everyone*."

121. There is no doubt that these emails were sent and received – although there was some dispute (at least initially) about their proper translation; and they were relied on by both Mr Berry and Mr Peto to support their respective cases. In particular, this last response from Mr Urumov *("Yes, 5 for everyone")* was relied on heavily by Mr Berry because, as he submitted, it was express contemporaneous written confirmation of the alleged oral representations that the sign-on fee would be split equally between all team members i.e. US$ 5m each. However, Mr Peto submitted that what was critical was <u>not</u> Mr Urumov's response but rather Mr Lokhov's initial question, because, as Mr Peto asked rhetorically, if such alleged misrepresentations had been made at the Coq d'Argent or on 11 October, why on earth would Mr Lokhov have needed to ask

Mr Urumov to send him "*… the distribution between the people*" and to pose the question "*5 for everyone ?*" If Mr Lokhov and the other claimants' witnesses are right, such questions would, submitted Mr Peto, have been completely unnecessary.

122. Mr Urumov's evidence is that the very first time that the question was raised as to how the US$ 25m sign-on fee was to be distributed was in that email from Mr Lokhov at 8.23 am on 22 October. The essence of Mr Urumov's evidence in this context appears from paragraphs 62 and 63 of his second witness statement. This is crucial to this part of the case and I therefore set it out in full:

> "*62. I should emphasise that this was the very first time that the question had been raised with me. I knew that we had agreed (and Mr Lokhov well knew) that I had discretion over the signing-on pool just as I would have discretion over the bonus pool. The team was moving over for $25 million. That had been agreed by at least 11 October 2011. How that $25 million was to be distributed or dealt with among the recipients was my concern. It was not a concern of OSM/OSL: it simply wanted the team to come over for the amount they were paying.*
>
> *63. I understood Mr Lokhov's request to relate to an administrative matter for OML/OSL and nothing more. On that basis I was happy to confirm it. I believed Mr Lokhov was simply asking "have you any problem if we do it like this?", to which my answer was "no, whatever suits you.""*

123. On 29 October, draft employment contracts were sent to Mr Urumov who replied to Mr Lokhov later the same day confirming that these were in order.

The Deeds/Payment Instructions

124. Thereafter, there were certain further discussions between Mr Lokhov and Mr Urumov relating to the "lock-in" periods for the sign-on fees. For present purposes, it is sufficient to say these were resolved and on 9 November 2010 Mr Lokhov emailed Mr Urumov five Deeds (one for each member of the team) that had been prepared by Otkritie's HR department. Mr Lokhov asked for these to be signed, together with a separate document for each individual, which identified the details of the Tenway account to which the monies should be paid (the "Payment Instructions"). The Deeds for Ms Mujagic, Mr Mufti and Mr Gherzi provided for OML to pay sign-on fees of US$ 5m to each. The Payment Instructions were for corresponding amounts for each member of the team. The documents commence with the words "*Please transfer USD 5,000,000 to the following account*" and give details for the Tenway account. However, as already noted above and without the knowledge of Otkritie, Mr Urumov had negotiated a much lower fee for each team member viz US$ 750,000 for Ms Mujagic; US$ 500,000 for Mr Mufti; US$ 1m for Mr Ramaiya; and US$ 2.5m for Mr Gherzi.

125. The evidence of Mr Urumov is that he was away from the office between 8 and 15 November and so forwarded the email to Mr Gherzi in the office, called him and asked him to distribute and discuss it with the team members. Be that as it may, it is absolutely plain that Mr Urumov was fully aware that the draft Deeds and Payment

Instructions were untrue in that (i) they overstated by a huge margin the sign-on payments that each of the team members – apart from himself – would receive; (ii) they concealed the true position viz that, as stated above, he (Mr Urumov) had agreed that approximately 50% of the total sign-on fee would be paid over to Mr Kondratyuk and Mr Pinaev; and (iii) he would retain for himself a sign-on fee substantially in excess of US$ 5m. Indeed, on his own admission, he knew that he had to produce these documents to get paid and that they were false. I consider further below Mr Urumov's attempted justification of the payments he made to Mr Kondratyuk and Mr Pinaev but, in any event, there is and can be no proper or satisfactory justification whatsoever for his conduct in signing (as he did) his own Deed and Payment Instruction as well as seeking and, where successful, procuring the relevant signatures of his team members to these documents which he plainly knew were obviously untrue and (as referred to below) then subsequently returning them to Otkritie as if they were true. It is, in my judgment, nothing less than a brazen and carefully orchestrated deceit on the part of Mr Urumov on a grand scale.

126. As to the procurement of the signatures to these documents, the evidence of Mr Gherzi is that he did indeed receive his own draft Deed for signature; that he raised the issue concerning the discrepancy between what the draft Deed stated there viz that he would be paid a sign-on bonus of US$ 5m and what he had agreed with Mr Urumov viz a payment of only US$ 2.5m; that Mr Urumov told him that if he wanted the sign-on fee they had negotiated, he had to sign the Deed; that he was not happy at being bullied in this way; that he discussed his concerns with Miss Mujagic; that she (Ms Mujagic) then discussed her own concerns with him; and that he then had further discussions with Mr Mufti and also a short discussion with Mr Ramaiya. In any event, Mr Gherzi confirmed that he did sign the draft Deed. Although he had no specific recollection of signing the Payment Instruction, I am sure that he did. Similarly, the evidence of Ms Mujagic (as contained in her witness statement but who was not called to give oral evidence) is that she knew that the documents she signed were untrue because she was going to receive only US$ 750,000 but that she was, in effect, persuaded by Mr Urumov into signing. By way of explanation, her evidence is that she found it very difficult to question Mr Urumov; that he was something of a "bully and authoritarian figure"; that he had no patience for questions; that she was therefore reluctant to query his approach or to press him further regarding the details of the arrangements he had made with OSL; that he was also her boss and that she felt she had to trust him to negotiate with OSL. As for Mr Mufti, he accepts that he knew that what was stated in the Deed was untrue but says that he was "naïve" and signed it in order to assist Mr Urumov in getting the bonuses for him and for everyone else.

127. It is, in my view, noteworthy that Mr Gherzi, Ms Mujagic and Mr Mufti were all experienced individuals earning very substantial salaries and bonus packages in the City. In my view, the decision by each of them to sign the relevant documents knowing them to be untrue on their face is inexcusable. I do not accept that such disreputable conduct can be justified on the basis of any "bullying" or supposed "naivety". I am prepared to accept that they may not have known the precise details of Mr Urumov's plan but, in my judgment, there can be no doubt that they were each signing documents which they knew were untrue and that they must have realised that this was for some nefarious purpose. In my view, it was nothing less than blatant dishonesty by each of these individuals driven by simple greed and self-interest on their part.

128. The Deeds and Payment Instructions for Mr Ramaiya and Mr Urumov provided for OML to pay sign-on fees of US$ 4m. As stated above, the sign-on fee that Mr Ramaiya had agreed with Mr Urumov was US$ 1m. He declined to receive it offshore and, despite pressure from Mr Urumov, insisted that it be included in his first OSL salary payment. According to Mr Lokhov, Mr Urumov told him that US$ 1m was required by Mr Ramaiya for a property purchase (which was untrue) and that it would be more efficient for this to be paid through OSL, the new employer, and taxed at source. At the same time, Mr Urumov asked for US$ 1m of his (alleged) US$ 5m share of the sign-on fee to be paid in the same way i.e. as part of his English salary. As submitted by Mr Berry, it seems to me that this was obviously done (as Mr Kondratyuk confirms) in order to ensure that Mr Lokhov did not ask any awkward questions of Mr Ramaiya, whom Mr Urumov considered "*too honest*". According to Mr Kondratyuk, Mr Urumov planned to put Mr Ramaiya in a "*compromising situation … to get Ramaiya drunk and then get some pictures of him with a prostitute or taking drugs which we could then use against him if he ever became difficult over the sign-on fee arrangements*".

129. As stated above, Ms Mujagic, Mr Mufti, Mr Gherzi and Mr Urumov signed the Deeds and the Payment Instructions, in the event all dated 15 November 2010. Mr Ramaiya's evidence is that he did not. Indeed, his evidence is that he was never shown these documents at the time. This is strongly disputed by Mr Urumov. His evidence is that that he gave Mr Ramaiya the draft Deed when he received it from Mr Lokhov and subsequently received a signed version back from him (i.e. Mr Ramaiya) which he understood to be signed by Mr Ramaiya and which he subsequently passed on to Mr Lokhov. However, Mr Ramaiya is emphatic that he did not see or sign these documents; that the signatures are not his; that he did not know and had never met a Nishi Singh, who purportedly acted as a witness; and that the only contract which he ever signed with OSL or any Otkritie entity is his onshore OSL contract of employment dated 16 November 2010 which provided (amongst other things) for a sign-on bonus of US$ 1m which is exactly what he had indeed agreed.

130. In his final submissions, Mr Peto submitted that it is inherently implausible that Mr Ramaiya was not aware of the "arrangement" (which I assume to mean that the Deeds and Payment Instructions were untrue); that Mr Ramaiya had taken independent advice from a tax and trust adviser about his own sign-on payment indicating that he took a great deal of interest in the detail of the arrangement; and that in all the circumstances, the inference must be that Mr Ramaiya had decided to deny knowledge of certain facets of the arrangement which he considered would interfere with his desire for a quiet life and that it is more likely than not that Mr Ramaiya was also complicit in allowing a scenario to unfold whereby Otkritie paid out US$ 23m according to the Deeds they now complain about. The first and last of these points were never properly put to Mr Ramaiya in cross-examination. Nor was it ever properly suggested, as it should have been if such case were to be advanced, that these signatures were indeed his own.

131. In any event, I do not accept Mr Peto's submissions with regard to Mr Ramaiya. Nor do I accept Mr Urumov's evidence that he ever gave the draft Deed or Payment Instructions to Mr Ramaiya. On the contrary, I accept the evidence of Mr Ramaiya. In summary, I am sure that the signatures were not those of Mr Ramaiya and that he was not aware of or complicit in the suggested "arrangement". I reach that conclusion not

only because Mr Ramaiya was, in my judgment, a careful and patently honest witness but also because there is the conclusive and unchallenged evidence of Dr Giles, the handwriting expert, that the signatures on both the relevant Deed and the Payment Instructions which are supposed to be those of Mr Ramaiya were forged. What is more, as Mr Ramaiya pointed out, the *force majeure* clause in the Deed (clause 6) is different from the corresponding provision (clause 6.8) of his contract of employment with OSL, which, according to his evidence, he had carefully negotiated. As submitted by Mr Berry, it is in my view extremely unlikely that he (i.e. Mr Ramaiya) would have accepted the *force majeure* clause as drafted in the Deed without corresponding amendments, nor would he have accepted the claw-back provision in the form as it appears in clause 2.

132. Further, Otkritie’s solicitors carried out enquiries relating to Nishi Singh, the supposed “witness” to Mr Ramaiya’s purported signature on the Deed. The evidence in relation to such enquiries (which I accept) is that neither the electoral roll nor property searches could link a Nishi Singh to the address given on the Deed, viz 829A Romford Rd, London E12 6NB; the stated postcode is for a different location entirely (136-208 Shakespeare Crescent); 829A Romford Road was acquired on 19 December 2008 by Bansal Holdings Ltd, and no director of that company or its company secretary is called Nishi Singh; the occupier of 829A Romford Road is a Narjinder Singh, who has lived there with his family for nearly two years; and Narjinder Singh did not recognise the passport photo of Mr Ramaiya and did not know anyone called Nishi Singh.

133. Notwithstanding, Mr Peto submitted that there is no evidence adduced by the claimants to show that the alleged forgery of Mr Ramaiya's signature (if such be the case) had anything to do with Mr Urumov whose evidence is as I have summarised above. It is right that there is no <u>direct</u> evidence that Mr Urumov forged Mr Ramaiya’s signature. However, I have no doubt that it was forged by someone; and, in my judgment, the overwhelming probability is that the forger was indeed Mr Urumov (or someone acting on his instructions) for the reasons advanced by Mr Berry. In particular, Mr Urumov had both the very strong motive and the opportunity to procure Mr Ramaiya’s signature to be forged. The document was a necessary part of his deceit – even on Mr Urumov’s own story. He could not count on Mr Ramaiya to sign a false document but the deceptive Deed and the Payment Instruction had to be signed or the scheme would unravel. There was no other individual who had such or any other similar motive or opportunity. As submitted by Mr Berry, the path of the documents excludes any realistic possibility that anyone else committed the forgery unless they were acting on Mr Urumov's instructions or under his supervision. In addition, Mr Kondratyuk’s evidence supports this thesis: he says he had been told by Mr Urumov that he (Mr Urumov) would arrange to forge Mr Ramaiya’s signature.

134. Shortly thereafter on 16-17 November Mr Urumov emailed Mr Lokhov copies of all of the signed Deeds and Payment Instructions including the Deed and Payment Instruction supposedly signed by Mr Ramaiya. In doing so, the claimants say that Mr Urumov obviously represented that: (i) he and the other members of the team expected and had agreed to, and would in fact, each receive a US$ 5m sign-on fee; (ii) the documents had been properly executed by each individual reflecting that expectation and agreement; and (iii) the monies to be paid by OML to Tenway were for the benefit of the team and would be distributed in the amounts stipulated in the

signed documentation; and that the representations were false, to Mr Urumov's knowledge.

Transfer/Distribution of the US$ 23m Sign-On Fee

135. It is Mr Lokhov's evidence that again relying on the various representations made by Mr Urumov, he then asked Mr Popkov to pay the balance of the sign-on fee viz US$ 23m (i.e. the agreed sign on fee of US$ 25m less the sum of US$ 1m each to Mr Urumov and Mr Ramaiya which had been agreed would be paid with their first salary payments) to Tenway which was done on 22 November from OML's account with JP Morgan in London. Thereafter, from Tenway or via another company beneficially owned by Mr Urumov (PUI), those monies were distributed to various parties and on various dates as shown in Figure 1. In particular, Mr Mufti received (through his company, Dorlcote Ltd) US$ 500,000 on 1 December 2010; Mr Gherzi received US$ 2,532,680 on 1 December 2010; Primrose Corporation (i.e. Ms Mujagic) received US$ 611,857 on 16 February 2011; Denning received a total of US$ 6,552,289 i.e. US$ 1m on 2 December 2010 and a further US$ 5,552,889 on 13 January 2011; Rossmore (i.e. Mr Pinaev) received US$ 5,667,000 on 22 December 2010; and Firmly Oceans (i.e. Mr Kondratyuk) received US$ 6,377,111 on 29 December 2010. Further Mr Kondratyuk's evidence is that it was agreed with Mr Urumov to give Mr Jemai an incentive to participate in the (subsequent) Argentinean Warrants Fraud by offering him US$ 400,000 – which Mr Kondratyuk subsequently did in cash.

136. Against that background, I turn then to consider the various claims advanced. As stated above, these fall under two main heads viz (i) the claim based on alleged deceit/misrepresentation against Mr Urumov; and (ii) the claim against both Mr Urumov and Mr Pinaev based on alleged bribery/dishonest assistance.

Deceit/Misrepresentation Act 1967

137. The main focus of this part of the claimants' case is the misrepresentations allegedly made by Mr Urumov at the Coq d'Argent in September 2010 as well as in the course of the meeting in Moscow on 11 October and thereafter. As pleaded, these alleged misrepresentations fall into two main categories viz that Mr Urumov and each of the team members "*expected and agreed to, and would in fact, receive a US$5 million sign-on fee*"; and that "*each member of the Fixed Income Team was entitled as part of his or her remuneration package with Knight Capital to very generous guaranteed bonuses worth US$5 million.*"

138. For the avoidance of doubt, it is absolutely plain that if these representations were made, they were false as Mr Urumov well knew and therefore dishonest. In particular, as to the first alleged misrepresentation, Mr Urumov certainly knew at all material times that the other four members of his team did not expect, had not agreed to and would not in fact each receive US$ 5m p.a. Equally as to the second alleged misrepresentation, Mr Urumov also certainly knew that the other four members of his team were not entitled to guaranteed bonuses worth US$ 5m. In particular, Ms Mujagic's salary was £10,000 per month gross plus a percentage of profits she generated; Mr Ramaiya's remuneration was based primarily on commissions from trades, and in his last year at Knight he made approximately £340,000; Mr Gherzi had a total guaranteed bonus of US$ 3m over (it can be inferred) at least 2 years; and Mr

Urumov's own contract with Knight was for two years with minimum compensation of US$ 2m per annum and US$ 1m worth of stock (i.e. US$ 5m over two years).

139. Plainly, the burden of establishing one or both of such representations and also reliance lies firmly on the claimants – as to which I have already summarised the evidence relied upon by them. However, Mr Peto went further. In particular, he submitted that the evidential burden facing the claimants is "high", not only by reason of the nature of the allegations of fraud but also (as he submitted) because of the inherently uncommercial nature of the representations which they claim to have relied upon. As set out above, I do not accept that this is the right approach. In my view, the standard of proof is the balance of probability although, of course, I accept that it is essential to bear in mind what might be said to be the "inherent probability" of any particular event having regard to all the circumstances.

Summary of submissions on behalf of Mr Urumov

140. In summary, Mr Peto submitted that Mr Urumov's evidence that no such misrepresentations were ever made was "strong and consistent"; that it was challenged unsuccessfully in cross-examination; that it had a virtue of logic and plausibility entirely lacking in the claimants' case; and that in any event there was no "reliance" by Otkritie. To some extent, these two discrete issues viz (i) what, if any, misrepresentations were made and (ii) reliance, overlap because they both involve, to some extent at least, consideration of, on the one side, the credibility of the claimants' witnesses and, on the other side, Mr Urumov as well as what may be thought to be the inherent probabilities.

141. In essence, the broad thrust of Mr Urumov's case as advanced by Mr Peto was that Mr Urumov was the star performer at Knight; the skill, experience and value to any potential employer of other team members was significantly inferior to his own; it would have been obvious to any professional banker, including (inter alia) Messrs Lokhov, V Belyaev and M Belyaev, that this was the case; that in reality Otkritie were interested in him (i.e. Mr Urumov himself) rather than his existing team at Knight; and that for that broad reason it is inherently unlikely that (i) he would have made any representations as to what his team earned at Knight or what each member of the team might want by way of their own sign-on fee; or (ii) Otkritie would have been particularly interested in such matters. In support of such case, Mr Peto relied in particular upon the following matters:

i) Otkritie looked to recruit Mr Urumov and *his* team; not a team of five, equally celebrated traders one of whom happened to be called Urumov. The absurdity of the claimants basing their case on their purported belief that they were recruiting five traders of 'equal calibre' is obvious from:

ii) The fact that Mr Urumov was the only one of the five who was a full time 'trader': Mr Mufti sometimes worked as a trader, otherwise he worked on sales; the other recruits were salespeople.

iii) Trading teams operate in a hierarchical manner, as would have been known to Otkritie, and the concept of a 'team' consisting of five members with interchangeable functions is absurd.

iv) In the whole course of negotiations before and indeed including the meeting in Moscow of 11 October 2010, not only is Mr Urumov the only recruit with whom Otkritie spoke and dealt, he is also the only person *about* whom Otkritie discussed internally.

v) Even on the claimants' own case, the decision to hire Mr Urumov was reached by 13 October 2010. This was more than a week before there is any evidence of the claimants receiving the names of the supposedly equally-esteemed traders, which came in Mr Urumov's email of 22 October 2010. The suggestion that these individuals were part of detailed discussions at the Moscow meeting on 11 October 2010 is entirely uncorroborated by any record, and Mr V Belyaev quickly retreated in cross-examination from the evidence he had given in Switzerland as to the presence of a 'dossier' of such information at that meeting.

vi) Nowhere is there any documentary support for the suggestion that Otkritie management thought they were in pursuit of a team consisting of five people of 'equal calibre' (not even in the early email of 17 June 2010). This was post hoc invention by the claimants' witnesses to buttress the false story about them thinking that US$ 5m had been paid to each.

vii) Members of the Urumov team freely admitted in cross-examination that there were differing levels of seniority and therefore payment expectation amongst them including Mr Ramaiya and Mr Mufti. Further, their evidence suggests that this would have been obvious and known to anyone in the industry. This corroborates the evidence given by Mr Urumov on this point from the very beginning of these proceedings.

viii) Mr Urumov's recruitment was agreed at the Moscow meeting. It was there that Otkritie made Mr Urumov a firm offer, which he accepted and understood to be the terms upon which he would join OSL; and the terms upon which he would endeavour to bring over his team from Knight. As a sign-on bonus for himself and his team, it was agreed that Mr Urumov would receive US$ 25m, for Mr Urumov to distribute as he saw fit.

ix) That the purpose of the Moscow Meeting was for the parties to reach a deal is shown by the email of 1 October 2010 where Mr Lokhov wrote to Mr Urumov: "*I would like you to come to Moscow so you can meet key people and (the) shareholders and make a proposal (an offer).*" This obviously had the meaning, in a context where Mr Urumov *was being recruited*, that Otkritie would make an offer *to Mr Urumov* to join OSL and create/establish the OSL Fixed Income Team. There was no mention of the other employees or any suggestion that they too would be invited to meet Otkritie management.

x) Recruitment and the quantum of the sign-on payment had not yet been agreed by the time of the Moscow Meeting. Mr M Belyaev told the court as much when questioned about it: his evidence was that prior to that meeting, in early October 2010 (i.e. presumably after Mr Lokhov's email of 1 October 2010): "*Mr Lokhov briefed me that he had met with Mr Urumov in London and there is a team that is happy to negotiate with us about them moving to our entity, but then the sign-on fee, in Mr Lokhov's opinion, would be quite high.*" Such

discussions as had taken place between Mr Urumov and Mr Lokhov before this date were conducted without reference to any split (because the number of team members had not yet been determined); yet still Mr Lokhov had in mind a high figure, because it was Mr Urumov's value he was focussed on. In cross-examination, Mr Popkov remembered that a figure of US$ 25m was already entertained.

xi) Mr M Belyaev confirmed that at the Moscow Meeting Mr Lokhov put a figure forward as to the quantum of the sign on payment. Mr M Belyaev claimed that he phrased that the bonus would be "*no more than $25 million*"; but the important point is that it was a figure suggested by Otkritie to Mr Urumov, and one suggested before any details of the other team members were known to them.

xii) Several of the claimants' witnesses admitted (as is obvious) that the decision to spend US$ 25m on the recruitment of a new trading team was an important one, and involved a significant outlay of funds. In this context, there is a striking absence of documentation (i) minuting the negotiations with Mr Urumov; (ii) noting that US$ 25m was to be split equally five ways; (iii) arising from or used in the presentations said to have taken place at the Moscow Meeting; (iv) the research report purportedly drafted by Mr Kondratyuk and referred to by Mr Popkov; (v) minuting the discussions which purportedly followed the Moscow Meeting between senior management, which the claimants rely on to say that the decision was not taken on that day; or (vi) calibrating in any way whatsoever the sum of US$ 25m with projected profits, etc. The obvious inference is that the claimants did not rely on any of the representations they now claim to have relied upon in circumstances where deceit is alleged, the claimants have a strong responsibility to make good their evidential case; and the absence of a whole swathe of common materials one would expect to see adduced in a case like this should lead the court to conclude that it cannot safely find that the claimants were thinking what they say they were thinking at the relevant times.

xiii) In any event, it is clear from the evidence of Mr V Belyaev that Otkritie placed no reliance on the purported pre-existing guarantees of US$ 5m bonuses for the Knight Capital Team when either (i) deciding to hire the team; or (ii) agreeing to pay US$ 25m in order to recruit that team. In particular, Mr V Belyaev confirmed that the decision to recruit Mr Urumov and his team rested, effectively, with him alone. His co-shareholder, Mr Mints, had given him the discretion to decide the matter and promised to support "any decision" made by him. Accordingly, when addressing questions of reliance and causation, the court need look no further than what went into Mr V Belyaev's decision. Mr V Belyaev was asked directly whether "*the reason why you agreed to pay 25 million was because you were told that each member of the five person team was being paid a £[sic]5 million bonus at Knight's?*" The answer was: "*No, the reason why we agreed to pay that amount was the expectation that their team would be able to earn over $50 million over a year.*" Mr M Belyaev also admitted in cross-examination that any pre-existing bonus arrangement at Knight would have been irrelevant to the decision. Mr V Belyaev went on to confirm that in fact Mr Urumov *did not* make any representation to him in the

terms pleaded and therefore even if it was made to another Otkritie employee (which it was not) the claimants could not have relied upon it when making the decision to pay US$ 25m. Indeed, even Mr Lokhov admitted that he could not in fact remember Mr Urumov telling him that the Knight team were each entitled to US$ 5m in guaranteed bonuses. Mr Lokhov's witness statement therefore contains an admitted lie. Further, the clear and direct evidence that Urumov and his team were recruited <u>because Mr V Belyaev thought they would earn US$ 50m over a year</u> also negates any purported reliance on the equal split of the Sign-On bonus.

Discussion and Conclusion on Misrepresentation and Reliance

142. The evidence of Mr Lokhov and the other claimants' witnesses viz Mr V Belyaev, Mr M Belyaev and Mr Popkov was, in my judgment, entirely credible and compelling both with regard to the pleaded representations and reliance. In my view, such evidence is also inherently probable and consistent with the contemporaneous documents.

143. For the avoidance of doubt, I do not accept Mr Peto's submission that Mr Lokhov admitted that he could not remember Mr Urumov telling him that the Knight team were each entitled to US$ 5m in guaranteed bonuses. On the contrary, that was his oral evidence at Day 9 p85 lines 6-15 which was consistent with his witness statement. The passage cited by Mr Peto in support of his submission (i.e. Day 9 p88 lines 10-16) was concerned <u>not</u> with the guaranteed bonuses that the team were receiving at Knight but with the amount of the sign-on fee (i.e. US$ 25m) on the basis of US$ 5m for each person. It is right that Mr Lokhov said that he could not remember whether that was expressly said at <u>that meeting</u> – which is plainly a reference to the meeting with Mr Belyaev and Mr Popkov. However, Mr Lokhov then goes on to state: "*I think it has been said. Because I had three meetings with Mr Urumov I don't remember where he said that but it was always the case. No doubt about it all.*" Moreover, the answer given by Mr Lokhov at Day 9 p88 line 1 also confirms that the representation that each member would get US$ 5m was mentioned several times on 11 October. I accept that evidence.

144. As to Mr V Belyaev, Mr Peto relies on the passage in his cross-examination at Day 3 p108 lines 13-17 where he was asked whether Mr Urumov told him (i.e. Mr Belyaev) that each member of his team was getting £5m each guaranteed bonus at Knight, to which Mr V Belyaev replied: "*Mr Urumov did not say such a thing to me personally*". That evidence is problematic because there is no suggestion of any representation that the team members were receiving £5m each at Knight – as opposed to US$ 5m – and although I have no doubt this was a mistake by Mr Peto in the question he put, I am not sure that the witness necessarily understood that it was a mistake. Be that as it may, I understood Mr V Belyaev's answer as referring to what Mr Urumov did not say to him <u>personally</u>. I did not understand Mr V Belyaev to retract or in any way qualify what he said in his witness statement viz. that Mr Urumov did tell them <u>all</u> during the discussion on 11 October that each of his team had a guaranteed yearly bonus of US$ 5m at Knight; and it was certainly never suggested to Mr V Belyaev that what he had said in his statement was untrue.

145. On the other side, it is my conclusion that Mr Urumov's evidence was not credible on a number of crucial points and was inconsistent with the contemporaneous documents. This is so for the following main reasons.

146. First, it is important to note that it is Mr Urumov's evidence that the possibility of taking any of his team at Knight over to Otkritie was not even discussed at the Coq d'Argent in September 2010; and that he also claims that the subject of his negotiations with Otkritie was the terms "*… upon which I could create a fixed income team for OSL*". I do not accept that evidence. In my view, it is not only inconsistent with Mr Lokhov's evidence (which I accept) but, as submitted by Mr Berry, it seems to me overwhelmingly improbable that neither the possibility of the team move nor the remuneration of the members of the team was discussed at the Coq d'Argent meeting. In my view, this is particularly so given that (i) (as even Mr Urumov accepted) a financial institution typically recruits a team to acquire its clients and contacts; (ii) Mr Urumov himself accepts that he knew that OSL was looking to recruit a fixed income team and that (as I accept) Mr Lokhov made it very clear at the meeting that he wanted to recruit such a team and, if possible, wanted Mr Urumov to lead that team; (iii) the thrust of the evidence of the other witnesses from Otkritie (which I accept) was that the recruitment of a team was, in effect, at the heart of Otkritie's plans for expansion; (iv) it makes little, if any, sense to pay a sign-on fee of US$ 25m for one man to come in and set up an untried new team. Moreover, in this context, Mr Urumov's evidence in this regard is inconsistent with the contemporaneous correspondence, including, in particular, an email sent by Mr Sergeev on 17 June 2010 to Mr Lokhov and Mr Popkov (among others) which said in terms that "*… we are in talks with a whole team which is well established and complete and which at the moment is one of the most successful in London and New York. Joining us this team can generate income straight away*". That was clearly a reference to the Knight team; and Mr Sergeev was, even in those early days, clearly under the (correct) impression that the negotiations with Mr Urumov were for the recruitment of Mr Urumov and his team. Further, this is also what Mr Urumov himself told his bankers at Clariden Leu viz that Otkritie was "targeting his team".

147. Second, I do not accept the evidence of Mr Urumov and the case advanced on his behalf that a legally binding contract was reached at the Moscow meeting on 11 October 2010. Again, not only is this contrary to the evidence of Mr Lokhov and the other claimants' witnesses with regard to what happened at the meeting but it is, in my view, both inherently unlikely and contrary to the contemporaneous documents. In particular:

i) The meeting only lasted an hour or so. It seems to me inherently improbable that any legally binding agreement might have been concluded in such period.

ii) The actual evidence of Mr Urumov in this regard is, at best, extremely weak. Thus, he stated in his second witness statement: "*Those present at the meeting confirmed that the terms and the US$ 25 million cost for the move were acceptable and I left the meeting which had lasted about an hour. I left the meeting believing that the deal was finalised and that my offer had been accepted and that it was now for me to move matters on.*"

iii) One of the directors and major shareholders of Otkritie, Boris Mints, could not be present at the meeting, and, according to the evidence of Mr M Belyaev

(which I accept), it was made clear to Mr Urumov that Otkritie's management needed to discuss the matter further before entering into a binding commitment.

iv) It was only on 11 October that Mr Urumov provided the names of referees to whom Otkritie could speak. So, according to the evidence of Mr Popkov, Mr M Belyaev and Mr Lokhov (which I again accept) there were still further enquiries to be made in that regard on the claimants' side.

v) It is equally plain, even from Mr Urumov's own evidence, that he still needed to talk to his team.

vi) The Bloomberg chat between Mr Pinaev and Mr Kondratyuk on 13 October which I have already referred to above and quoted in material part is, in my view, strong evidence that no legally binding agreement had been reached on 11 October. In my view, the overwhelming probability is that the "he" in that chat is indeed a reference to Mr Urumov. The evidence of Mr Pinaev that this was a reference to Melton Plummer is demonstrably false because other evidence confirmed that he (Mr Plummer) was a junior salesman taken on by Otkritie much earlier in the year i.e. in June 2010; and Mr Pinaev's further suggestion that it was (or might have been) a reference to Mr Jemai is, in my view, not credible – the manifest priapic excitement in that chat would be incomprehensible if it were indeed a reference to the relatively young and (at least then) inexperienced Mr Jemai. There is no other individual to whom this chat might refer.

148. Third, the email on 22 October from Mr Urumov stating "*Yes, 5 for everyone*" speaks for itself; as do the events relating to the preparation and signing of the Deeds and Payment Instructions which I have already summarised above. All such matters point strongly – indeed conclusively, in my view – that Mr Urumov did (at the very least) make representations that the US$ 25m would be split equally between all team members; and that this explains why he took elaborate steps to deceive Otkritie into believing that that was the case when, of course, it was not true as Mr Urumov well knew.

149. Mr Urumov's purported explanation that his email stating "*Yes, 5 for everyone*" and the Deeds and Payment Instructions, albeit false, were merely for Otkritie's "*internal administrative purposes*" such that he did not mean to represent to Mr Lokhov or Otkritie, or intend them to believe in equal sharing or in the documents, is, in my view, not only not credible but utterly disingenuous. In particular, as submitted by Mr Berry, Mr Urumov does not explain why the drawing up of contractual documentation recording the agreement of the parties in relation to such large sums of money should be an "*administrative*" matter of no significance and – even if that were the appropriate label – why it gave Mr Urumov a licence to lie to his future employer. To my mind, there is no plausible honest explanation. The Deeds and Payment Instructions were formal documents creating legal rights and obligations and Mr Urumov knew he had to provide them as a condition of payment. It is not credible that he believed that Otkritie would require formal legal documents as a condition of payment but, in effect, not care that such documents were shams.

150. Further, the "clawback" clauses, requiring repayment if one of the team members left early, were important terms in all the Deeds. As submitted by Mr Berry, it would be absurd for Mr Lokhov and Otkritie to insist on clawback clauses but then agree clawback of only US$ 4m with Mr Urumov if Mr Lokhov or Otkritie had known that he (i.e. Mr Urumov) was free to take for himself up to say US$ 20m or more and then immediately leave. It would also be absurd to require a clawback of US$ 5m from e.g. Mr Mufti if he was entitled to get very much less.

151. As submitted by Mr Peto, I accept that it might be unusual, even surprising in a normal case, for each member of a team to receive the same as the "leader" and it is noteworthy that Mr V Belyaev's evidence in the Swiss proceedings was that he was "*surprised that they split the bonus evenly into five parts*". However, given the contemporaneous documents, there is, in my view, no reason to doubt that Mr Urumov represented it would be so, and intended such representation to be believed, and that it was believed. As submitted by Mr Berry, it was a positive (albeit false) selling point by Mr Urumov that each team member had a guaranteed US$ 5m p.a. at Knight and needed, and agreed, to move for US$ 5m, because it (falsely) gave the impression that each member was "*about the same calibre*" and that he was merely *primus inter pares* of a uniformly valuable team. This was, in effect, the evidence of Mr V Belyaev which I accept.

152. For the avoidance of doubt, I do not consider that any of the foregoing is in any way diluted by the question posed by Mr Lokhov in his own earlier email on 22 October. In my view, the answer to Mr Peto's rhetorical question as noted above is the one given by Mr Lokhov himself i.e. he was seeking confirmation of what had already been discussed. In any event, it seems to me that the email from Mr Urumov stating "*Yes, 5 for everyone*" is itself a misrepresentation; and I am satisfied that it was relied upon by Mr Lokhov and therefore Otkritie in going ahead with the proposed deal. For example, I am sure that, as Mr Lokhov stated, if Mr Urumov had said at that stage that only four members of the team were joining, Otkritie would not have gone ahead with the deal or at the very least would have renegotiated the sign-on fee to US$ 20m.

153. Mr Peto submitted that even if the email on 22 October from Mr Urumov stating "*Yes, 5 for everyone*" was a misrepresentation, it is irrelevant for two main related reasons viz (i) it comes too late because it post-dates the Moscow meeting on 11 October when, as Mr Peto submitted, a binding agreement was reached between Otkritie and Mr Urumov, or at least post-dates 13 October when, even on the claimants' case, an agreement in principle was reached; and (ii) even if there was no binding agreement before 22 October, Otkritie had already made the decision to spend a global figure of US$ 25m before that date and therefore Otkritie cannot say that they relied on Mr Urumov's representation in his email that "*Yes, 5 for everyone*". I do not accept these submissions. As stated above, I do not accept that any legally binding agreement was reached on 11 October. Nor in my view was any legally binding agreement reached on 13 October. At best, it seems to me that a non-binding agreement in principle was reached on 13 October and that as a matter of legal analysis, binding contracts for the recruitment of the five members of the team and payment of the sign-on fees were only made when the Deeds (and contracts of employment) were actually agreed and signed which was, of course, well after 22 October. Further, as stated above, I am satisfied that the "*Yes, 5 for everyone*" representation in Mr Urumov's email was intended to be and was in fact relied on by Mr Lokhov and therefore Otkritie in going

ahead with the proposed deal. The fact that Mr Urumov was prepared to procure the signing of the false Deeds and Payment Instructions is in my view confirmation that he realised that this was the case.

154. For these reasons, it is my conclusion that Mr Urumov did indeed make the various representations as pleaded in paragraphs 25, 26 and 27 of the Particulars of Claim; that such representations were false as pleaded in paragraph 28 of the Particulars of Claim; and that such false representations were made by Mr Urumov intending them to be relied upon by Otkritie and knowing that they were false as pleaded in paragraph 29 of the Particulars of Claim. Given these findings, it is unnecessary to consider the alternative claim under the Misrepresentation Act 1967.

155. As to reliance, I have already referred to the passages in *Chitty on Contracts* and *Clerk and Lindsell* with regard to the "presumption of inducement" in the case of a fraudulent statement. In any event, I am satisfied that Otkritie were induced to go ahead with the deal in particular to enter into the Deeds and to pay over US$ 23m as a result of Mr Urumov's fraudulent misrepresentations as stated above. I reach that conclusion in particular in light of the evidence of Mr Lokhov and Mr V Belyaev which I accept.

156. For the avoidance of doubt, I reject Mr Peto's submission that the evidence of Mr V Belyaev is to the contrary. As quoted above, it is right that Mr V Belyaev said in cross-examination that the reason why he agreed to pay US$ 25m was <u>not</u> because each member of the team was receiving a £ (sic) 5m bonus at Knight, but rather because of the expectation that the team would be able to earn over US$ 50m a year. That answer makes sense – indeed obvious sense – in that context i.e. to explain why Otkritie were prepared to pay US$ 25m rather than any other sum but it does not follow from that that the representations relied upon by the claimants were not <u>a</u> cause of what Otkritie were induced to do which is, as a matter of law, sufficient to found liability and which they plainly were.

157. Nor do I accept Mr Peto's contention that it was unrealistic for Otkritie to believe that each member of the Knight team would receive US$ 5m. As submitted by Mr Berry, if Mr Urumov is right, it would make a nonsense of the US$ 5m claw-back provisions in each of the Deeds; and if, as Mr Urumov said, each member of the team was guaranteed US$ 5m a year at Knight, they were a team of equals, of which Mr Urumov as leader was merely *primus inter pares*, and equal sharing of the sign-on fee at OSL was both rational and fair. Nor do I consider that there is any merit in the further point advanced by Mr Peto that Otkritie cannot succeed because they failed to make enquiries, e.g. with Knight or the individual team members, with regard to the existing bonus arrangements at Knight. As stated above, it does not lie in the mouth of a liar to say that the claimant was foolish to take him at his word. Moreover, the point made by Mr Urumov lies ill in his mouth, in circumstances where he had assured Otkritie with regard to the existing bonus arrangements and that the Sign-On Fee would be shared equally. In this context, Mr Urumov also sets much store by the annual (performance) bonus arrangements that were envisaged for the team once they commenced employment with OSL. He claims that there was an annex to each of the other employees' contracts of employment appointing Mr Urumov as an administrator for the distribution of bonuses to his team. A draft was indeed proposed, but not agreed. None of the team recalls an annex to the contract they signed; none is appended to any existing version of their contracts; and none has been found. In any

event, as submitted by Mr Berry, the bonus arrangements were prospective, and were linked to the team's performance once they joined OSL – they had nothing to do with the distribution of the sign-on fee.

158. In summary, I am satisfied that the representations as I have found were relied upon by OML in entering into the Deeds and in making the payment of US$ 23m to Tenway.

Bribery/Dishonest Assistance

159. The claimants advance a further or alternative case against both Mr Urumov and Mr Pinaev jointly based on the tort of bribery and/or dishonest assistance. As to such case, it is common ground that Mr Urumov paid approximately 50% of the sign-on fee to Mr Kondratyuk and Mr Pinaev i.e. a total of US$ 12,044,111.

160. As to the law, I have already summarised the main applicable principles. As to the facts, there can, in my view, be no doubt that Mr Urumov knew (at the time he made the promises and payments even on his own case) that Messrs Pinaev and Kondratyuk each occupied a senior position within the Otkritie Group; and that Messrs Pinaev and Kondratyuk were in a position of trust and confidence as regards not only their immediate employer, but also other entities in the group which are closely linked and interdependent and therefore owed fiduciary duties. It is on this basis that Mr Berry submits that by agreeing to receive and receiving what were obvious "bribes" or "kickbacks", Messrs Pinaev and Kondratyuk breached the strict duties imposed on them as fiduciaries; and that the conflict between their duty (of undivided loyalty) and their private interests (in earning kickbacks) is patent and inexcusable.

161. However, Mr Peto submitted in effect that these payments were not to be categorised as "bribes" and that the claimants' bribery allegations failed for three principal reasons viz: (i) the suggestion that Messrs Pinaev and Kondratyuk could have secured Mr Urumov a position at the bank far senior to their own is absurd in particular because neither of them was part of the decision-making body which considered Mr Urumov's recruitment; (ii) the lack of any conflict of interest caused by the payments as between Messrs Pinaev and Kondratyuk and Otkritie in circumstances where the payments made by Mr Urumov ensured that they would continue to work for Otkritie; and (iii) the reliance placed by the claimants on Mr Kondratyuk's hopelessly discreditable evidence, it being the only evidence available to them to contradict the innocent and consistent explanations given by Messrs Urumov and Pinaev.

162. In particular, Mr Peto submitted as follows:

i) There is no suggestion – as there cannot be – that Messrs Pinaev/Kondratyuk were part of the decision-making body which considered Mr Urumov's recruitment. The only capacity in which they were consulted were as people who knew Mr Urumov (in Mr Pinaev's case, socially – as Otkritie well understood, Mr Pinaev having introduced Mr Urumov to Otkritie through Mr Sergeev and Mr Khazan; in Mr Kondratyuk's case, from market reputation) and it was only in this capacity that they gave their impressions. That they commended Mr Urumov as a worthy potential recruit can hardly give rise to an inference of bribery because it was a patently reasonable thing to say: it is not seriously disputed by the claimants that Mr Urumov had a burgeoning

reputation as a stellar trader; and that market impression of Mr Urumov was the reason Otkritie were interested in hiring him.

ii) No conflict of interest arose between Otkritie and Messrs Pinaev/Kondratyuk either as a result of their recommendations or as a result of the payment.

iii) Mr Pinaev was open about the fact that he knew Mr Urumov when giving the recommendation that he be considered for recruitment. This has always been admitted by Mr Pinaev and Mr Sergeev confirmed that he knew of the social connection between Mr Urumov and Mr Pinaev.

iv) The sign-on payment had already been agreed by Otkritie and Mr Urumov (i.e. on 11 October) prior to Mr Urumov meeting with Messrs Pinaev and Kondratyuk which led to Mr Urumov's agreement to pass on some of the sign-on fee that was otherwise his own – in particular, the Court must adopt a realistic appraisal of business practice as pertains to the particular culture in the case: in this regard, Mr Urumov's comments at §51 of his second witness statement are important: "*I was very disappointed by this turn of events as it meant I would lose a very substantial sum of money. However, I knew enough of business in Russia not to be completely surprised.*"

v) The threatened resignations of Messrs Pinaev and Kondratyuk were credible in a context where Mr Urumov's team would be arriving from nowhere to trade from the same balance sheet. Bankers, it should be uncontroversial and to put it mildly, are predominantly motivated by their bonus arrangements. It was a logical step to take on Mr Urumov's behalf because his arrival *did* threaten the position of others.

vi) In any event, Mr Urumov never intended that the payments to Mr Pinaev and Mr Kondratyuk would be kept secret. His evidence is that he remembers asking them whether they had disclosed it; and they said yes.

vii) Mr Kondratyuk's evidence is to be discounted. In respect of the sign-on funds that he received, there are two notable lies which renders his account of no value to the Court viz (i) in order to fit the bribery allegations into Mr Kondratyuk's fabulous narrative of conspiracy, he absurdly asserts that the Sign-On 'Fraud' was hatched between him, Mr Pinaev, and Mr Urumov in June 2010. In fact, Mr Urumov did not meet Mr Kondratyuk until October 2010, when he joined Otkritie Bank; (ii) in an effort to give evidence as helpful as possible to the claimants' invented case on the alleged misrepresentations, Mr Kondratyuk inadvertently contradicts Mr Lokhov, by swearing that Mr Urumov planned from the start to ask for US$ 25m, with US$ 5m for each member. Mr Lokhov, of course, claims that Mr Urumov had initially asked for US$ 50m. This is further proof that Mr Kondratyuk's evidence has been tailored to meet the facts pleaded in the claimants' statement of case, rather than to reflect any version of reality.

163. I do not accept these submissions for the following reasons. First, there is and can be no doubt whatsoever that both Mr Pinaev and Mr Kondratyuk were senior employees and therefore "agents" of Otkritie and, as such, owed fiduciary duties to Otkritie. Second, it is common ground that the payments were not disclosed to Otkritie. The

argument that these payments were not bribes because neither Mr Pinaev nor Mr Kondratyuk was part of the decision-making body is, in my view, specious. As stated above, it is sufficient that the payment gives rise to an actual or potential conflict of interest. Third, I reject the suggestion that Mr Urumov never intended that the payments to Mr Pinaev and Mr Kondratyuk would be kept secret. In my judgment, that is yet another deliberate untruth by Mr Urumov – as is the further double-suggestion that he remembers (i) that he asked them whether they had disclosed such payments and (ii) that they said: yes. In any event, as stated above and absent proper disclosure in fact, a briber cannot be heard to say that he believed that the agent would disclose the existence of his bribe to his principal.

164. Given the position occupied by both Mr Kondratyuk and Mr Pinaev, it matters not whether they were in fact influenced by the bribe. As stated above, there is in these circumstances an irrebuttable presumption of inducement. In any event, on the facts I have no doubt that Mr Pinaev's conduct in introducing Mr Urumov to Otkritie and the conduct of both Mr Pinaev and Mr Kondratyuk in lobbying for Mr Urumov and his team to join Otkritie was heavily influenced by, at the very least, the expectation of a substantial bribe or kickback. In reaching that conclusion, I reject the evidence of both Mr Urumov and Mr Pinaev that it was only after the meeting on 11 October that Mr Pinaev and Mr Kondratyuk in effect insisted that Mr Urumov split the sign-on fee with them. It is true that, apart from the evidence of Mr Kondratyuk, there is no direct evidence of any discussion still less any agreement of such arrangement; and I readily accept that the precise details of such arrangement may well not have been finalised until shortly after the meeting on 11 October. However, in my view, the essential elements of the evidence of Mr Kondratyuk in this context are in my judgment entirely credible which I accept even if the precise detail may be a matter of debate. In any event, even if the arrangement to split the sign-on fee with Mr Kondratyuk and Mr Pinaev was only agreed <u>after</u> 11 October, I do not consider that this provides either Mr Urumov or Mr Pinaev with any defence. This is because as I have found (i) no legally binding agreement to pay the sign-on fee was reached between Otkritie and Mr Urumov on 11 October; and (ii) if Otkritie had discovered that the representations were fraudulent prior to the Deeds being signed and the payment of US$ 23m being paid to Tenway, I am sure that Otkritie would have refused to proceed.

165. Fourth, the explanation now advanced by Mr Urumov and Mr Pinaev in an effort to justify the payments to Mr Pinaev and Mr Kondratyuk is, in my judgment, not credible. In particular, the case advanced is that the payments were agreed and made by Mr Urumov privately to compensate Mr Kondratyuk and Mr Pinaev for likely loss of very substantial future remuneration (bonuses) as a result of the recruitment of Mr Urumov's team, and to dissuade them from leaving. As submitted by Mr Berry, every element of that assertion is in my judgment demonstrably false for at least three reasons. First, the *raison d'être* for the new FI team was to exploit new opportunities and generate substantial profits for Otkritie. Mr Pinaev introduced Mr Urumov and he and Mr Kondratyuk lobbied management hard to recruit Mr Urumov's team. It is against human nature for them to have thus supported a measure if it would cause them very substantial loss. The notion that anyone could genuinely have supposed that the Knight team would cause losses to the existing FI team by taking any of their business is in my view nonsense. Second, the prospective future remuneration, said to have been lost, is fantastical. Mr Pinaev's bonus for 2010 (which was an exceptionally profitable year) was US$ 700,000. That sum cannot form the basis of

any credible calculation resulting in a compensatory package of almost US$ 6m. Third, Mr Pinaev belatedly seeks to get around that conclusion by arguing that a new bonus regime was due to be implemented in January 2011; that "*it had been promised to* [*him*] *by Sergeev personally*"; and that it would have resulted in a likely bonus of "*about half of* [*$12.5 million*]". I do not accept that assertion. Mr Pinaev cannot produce any documentary evidence to support this assertion; Mr Sergeev categorically denies having made any promises to Mr Pinaev; and both Mr Sergeev and Mr Popkov confirm that no new regime for bonus payments was envisaged for 2011. I accept that evidence.

166. Finally, Mr Kondratyuk confirms that the payment he received from Mr Urumov was not made to persuade him to stay at Otkritie or to compensate him for any reduced bonus on account of Mr Urumov's recruitment. Further, he points out that in order to help explain the payment to Mr Kondratyuk's bank, Mr Urumov prepared a "consultancy agreement" dated 27 December 2010, expressed to be between PUI and Firmly Oceans. This was recently discovered by the Geneva prosecutor in Dunant's safety deposit box at Bordier Bank in Geneva. Clause 3 of this purported agreement provides for PUI to pay Firmly Oceans a "*sign-up fee*" of US$ 6,377,111 in consideration of Firmly Oceans agreeing to enter into the agreement, i.e. <u>before</u> any consultancy services are, supposedly, to be rendered. PUI, a Panamanian shell company incorporated barely a month previously, is recorded in the preamble as having "*potential business, projects and transactions in the Russian Federation, Kazakhstan and Ukraine*". In my judgment, that agreement is clearly a fake or a sham or both, giving yet further reason to reject Mr Urumov's attempt to clothe these bribes with a credible explanation.

Conclusions: Sign-On Fraud

167. For all these reasons, I can summarise my conclusions with regard to the claims in respect of the sign-on fee as follows:

i) OML is entitled to recover damages from Mr Urumov in the sum of US$ 23m in deceit. In addition, the forged Deed is a nullity and the other Deeds have been rescinded. The effect of such rescission is to revest equitable title to the money in OML and, in principle, to entitle OML to proprietary relief including declarations of ownership of specific assets and various consequential orders.

ii) Mr Urumov is liable to OFC/OSL/OML on the basis of the tort of bribery and/or dishonest assistance for the full amount of the bribes which he paid over to Mr Kondratyuk and Mr Pinaev (i.e. US$ 12,044,111) although such liability is, of course, concurrent (and not additional) to Mr Urumov's liability in deceit. In addition, given that the money is or at least was beneficially the property of Otkritie, the relevant entity is, in principle, entitled to proprietary relief including declarations of ownership of specific assets and various consequential orders, equitable compensation, and/or an account.

iii) Mr Urumov and Mr Pinaev are jointly and severally liable for damages for conspiracy in the sum of US$ 12,044,111 although such liability is, of course, concurrent (and not additional) to their other liability as stated above.

iv) Mr Pinaev is jointly and severally liable to OFC/OSL/OML/OB on the basis of the tort of bribery and/or breach of fiduciary duty for, at least, the amount of the bribe which he received i.e. US$ 5,667,000. Such liability is, of course, concurrent (and not additional) to Mr Pinaev's other liability as set out above; and, again, the relevant claimant is, in principle, entitled to proprietary relief, equitable compensation, an account of profits and also declaratory/ consequential relief. I do not consider that Otkritie can properly advance a claim for the tort of bribery against Mr Pinaev in respect of the separate bribe to Mr Kondratyuk but, in my view, Mr Pinaev is also liable for breach of fiduciary duty in respect of such payment and the relevant claimant is entitled to equitable compensation, an account of profits and also declaratory/consequential relief in respect thereof.

v) Denning is liable to OML in the sum of US$ 6,552,889 for damages and/or equitable compensation and/or an account on the basis of knowing receipt on the basis that it was plainly used by Mr Urumov as a device or façade: see *Trustor AB v Smallbone (No 2)* [2001] 1 WLR 1177 at §23 per Sir Andrew Morritt V-C; *Petrodel Resources Ltd v Prest* [2013] 3 WLR 1.

Part V: Events following the Sign-On Fraud

168. After leaving Knight, Mr Urumov and the rest of his team (including Mr Gherzi) moved to Otkritie's offices in London to work alongside Mr Pinaev (who worked mainly from Otkritie's offices in London). For the avoidance of doubt, Mr Lokhov and Mr Popkov continued to be based in Moscow. As for Mr Jemai, there was conflicting evidence. There is no doubt that after joining Otkritie in 2010, he was based in Moscow. As originally pleaded, the claimants' case was that Mr Jemai did indeed work in Otkritie's offices in Moscow until around April 2011 and thereafter in their offices in London. This is consistent with an email from Mr Urumov in May 2011 which stated that Mr Jemai had "moved" to London. This was disputed by Mr Jemai. In any event, consistent with other evidence (including the evidence of Mr Popkov) there is, in my view, no doubt, that during the early part of 2011, Mr Jemai spent an increasing amount of time working alongside Mr Urumov and Mr Pinaev in Otkritie's London offices.

169. Following the recruitment of the Knight team, the evidence of Mr Kondratyuk is that there were a number of important events and discussions leading up to what became the alleged Argentinean Warrants Fraud. In summary, according to Mr Kondratyuk's evidence, these were as follows:

i) That in late November 2010, he (Mr Kondratyuk) had lunch with Mr Jemai at the T-Bone restaurant in Moscow; that this was against the background that in about June 2010, Mr Pinaev had asked him if he could hire Mr Jemai – a proposal which Mr Kondratyuk had accepted and which resulted in Mr Jemai being duly employed by Otkritie; that Mr Pinaev had told him that he had an agreement with Mr Jemai according to which Mr Pinaev would give him (i.e. Mr Jemai) extra money i.e. US$ 400,000, because they were friends and because Mr Jemai was a junior trader.

ii) That Mr Jemai was present during discussions between him (i.e. Mr Kondratyuk), Mr Urumov and Mr Pinaev and that he (i.e. Mr Jemai) knew and

understood everything about the sharing of the sign-on fee and the proposed Argentinean Warrants Fraud.

iii) That Mr Jemai accepted Mr Pinaev's proposal to pay him an extra US$ 400,000, although Mr Jemai had said that he only wanted US$ 367,000 because he had to settle up with Mr Pinaev for a BMW car which was worth the difference; and that that is indeed what happened later i.e. Mr Kondratyuk handed over the money to Mr Jemai in January 2011.

iv) That, meanwhile, at the end of 2010, Mr Kondratyuk together with Messrs Urumov, Pinaev and Jemai, all attended Otkritie's New Year's corporate party in Moscow following which they all went to the Galstuk striptease club, where they discussed in some detail the proposed fraudulent trade; that Mr Urumov said that he had spoken to Mr Gherzi about clients willing to make a "bond killing"; that Mr Pinaev replied that he had a very good contact with Snoras; that the deals could be done through them; that the idea was that Snoras, or a company connected to it, would buy bonds at market value to sell them later at more than market price; that according to Mr Pinaev, Gemini and Snoras were prepared to share the profit at a ratio of 20% for themselves; that the money would be transferred to bank accounts that they would indicate to them; that they also discussed another option proceeding the same way but through Mr Pinaev's and Mr Urumov's Quantum Leap Fund; that Mr Urumov said that he had frequently traded Argentinean warrants and that if a person was not experienced there was also a risk of a foreign exchange mispricing; and that Mr Pinaev offered the others to use mobile phones with pre-paid cards to remain anonymous so that nothing would be recorded on Otkritie's systems.

v) That, thereafter, Mr Kondratyuk went on holiday to Miami; and that Mr Pinaev and Mr Jemai went skiing in Switzerland.

vi) That there were then further important discussions between Mr Kondratyuk and Messrs Pinaev, Jemai and Urumov with regard to the proposed Argentinean Warrants Fraud in particular during a party to celebrate his (i.e. Mr Kondratyuk's) 30th birthday in the Senatra restaurant in Moscow on 19 January 2011; that it was during this discussion that they had thought they could use a contact of Mr Urumov and Mr Gherzi who worked at Threadneedle (i.e. Mr Gersamia) but that it was considered (at least at that stage) too hard to implement the fraud through him; that it was finally decided to place the scheme on Otkritie and that they would then shift the bonds to Threadneedle; that there were then detailed discussions between all of them with regard to the proposed deal; that it was Mr Urumov who suggested buying the securities on his own position at Otkritie through Gemini and Snoras at a price increased earlier; that Argentinean warrants were specifically suggested by him because the prices were 2-3 per cent in US$ and 10-12 per cent in pesos; that there was an error in the column price of US$/peso on Bloomberg; that it was a sovereign bond and therefore easier to make a large quantity and that it was possible to state that the paper was a trade in US$ not pesos. There were also specific discussions about involving Mr Gersamia who, Mr Urumov said, worked at Threadneedle and wanted to steal money. All four then discussed the main questions that needed to be decided and appointed the

responsible person for each particular task including with regard to the way in which the profits would be "laundered".

vii) That in late January/early February, Mr Urumov and Mr Pinaev met Mr Giovanna of Bordier in St Moritz to discuss with him the possibility of receiving a large sum of money; and that after that meeting Mr Urumov and Mr Pinaev called him (Mr Kondratyuk) on his mobile confirming that Mr Giovanna had agreed to receive a large amount of money.

viii) That thereafter, in early February 2011, there were further specific discussions between Mr Kondratyuk, Mr Urumov and Mr Pinaev with regard to the execution of the proposed fraud; that they all became concerned over security and Otkritie finding out about their plans; and that Mr Pinaev said he would take charge of this issue, which he did by giving out mobile phones with different sim cards and different email accounts.

170. Although certain of the basic facts outlined above were admitted (i.e. Mr Jemai having lunch with Mr Kondratyuk in November 2010, the Otkritie party at the end of 2010, and Mr Kondratyuk's 30th birthday party at the Senatra restaurant), Mr Urumov, Mr Pinaev and Mr Jemai all strongly denied being party to any discussions concerning any proposed fraud as summarised above or at all. In particular, they all denied any agreement to pay or any payment of US$ 400,000 to Mr Jemai. Much time was spent in the course of cross-examination during the trial focussing on these events. In summary, Mr Peto and Mr Smith both submitted that Mr Kondratyuk's evidence in this regard was all a pack of lies. Indeed they submitted that it was absurd to suggest that any proposed fraud would have been discussed at what were in effect social occasions and, for that reason alone, Mr Kondratyuk's evidence was not credible.

171. Standing alone and viewed in isolation, it is, in my view, quite impossible to reach any positive conclusions one way or another with regard to this clash of oral evidence concerning alleged events which took place towards the end of 2010 and early 2011 – whether in whole or in part. Bearing in mind the conclusions which I have already reached with regard to the sign-on fee fraud, it is tempting simply to accept the truth of Mr Kondratyuk's evidence with regard to these events – and, at the very least, to reject the evidence of Mr Urumov and Mr Pinaev; but, in my view, that is the wrong approach. Rather, it seems to me that the proper approach is to hang back from reaching any conclusion at all in relation to such events and to consider the further evidence with regard to subsequent events as referred to below starting with the First Trade.

The First Trade

172. As already summarised in the first part of this Judgment, the First Trade consisted of two separate deals which resulted in an overall apparent profit to OSL of almost US$ 2.5m. The first deal was made on 25 February 2011. This involved OSL contracting to buy 100 million Argentinean warrants from Adamant. The stated price was 13.02 per cent in US$, i.e. a total of US$ 13,020,000. The second deal was made a few days later on 2 March 2011. This consisted of OSL contracting to sell the same 100 million warrants to another company, JSC Norvik Banka of Riga ("Norvik"). The stated price was 15.47 per cent in US$, i.e. a total of US$ 15,470,000. Both trades settled in two

tranches on 8/9 March 2011 when OSL paid for and received the warrants into its account with JP Morgan in London (on the buy leg) and received payment and transferred the warrants out of the same account (on the sell leg). The result was the apparent profit referred to above, i.e. almost US$ 2.5m. These matters are not in dispute and were known to Otkritie at the time.

173. What Otkritie did not know but what appears from the contemporaneous documents is that these transactions were what can only be described as a "round-trip" or "merry-go-round". This appears in diagrammatic form in Figure 2. In broad summary, the details of this "round-trip" were as follows. The warrants were sourced on the market with the assistance of David McCann at brokers BGC Capital Partners ("BGC") and Dmitry ("Dima") Posokhov of JSCB Investbank on 25 February 2011 from First Overseas Bank ("FOB") at a price of approximately US$ 3.66 per cent i.e. a total of US$ 3.66m. On 1 March 2011, the same warrants were then sold by BGC to Gemini which had a client trading account at Snoras. Meanwhile, a contract to buy those same warrants had been entered into by Otkritie at the stated price of US$ 13.02 per cent, i.e. a total of US$ 13,020,000. It is important to note that that purchase was notionally from Adamant which, in effect, acted as a "switch" in their purchase of those warrants at a slightly reduced price from Gemini/Snoras. On 3 March 2011, the same warrants were then sold on back to Gemini/Snoras through another "switch" (i.e. Norvik) at the stated price of US$ 15.47 per cent i.e. a total of US$ 15,470,000. On the same day, the warrants were then resold back by Gemini/Snoras via BGC to FOB at US$ 3.68/US$ 3.69 per cent i.e. a total of US$ 3.68m/US$ 3.69m.

174. I consider further below the particular sequence of events with regard to the making of these trades and the involvement of various individuals including, in particular, Mr Urumov, Mr Pinaev and Mr Jemai. However, the following brief points need to be highlighted and indeed emphasised.

175. First, it is common ground that both the buy transaction from Gemini/Snoras via Adamant and the sell transaction back to Gemini/Snoras via Norvik were at prices vastly in excess of (i.e. almost 4 times) the market price.

176. Second, it is also common ground that OSL apparently made a substantial profit on these two transactions viz almost US$ 2.5m.

177. Third, I accept, as submitted by Mr Berry, that there was no commercial reason to engage Adamant as a switch on the sale of the warrant by Gemini/Snoras to OSL – or to engage Norvik as a switch on the resale. This is so because OSL had existing trading lines already in place with Snoras and could therefore have transacted directly. In my judgment, the only explanation for using (and paying for) switches was to conceal Snoras' and Gemini's involvement in both legs of the trade.

178. Fourth, the ostensible loser in the First Trade was Gemini/Snoras. On the face of it, they had sold the warrants through Adamant to Otkritie for approximately US$ 13.02m but had bought them back from Otkritie a few days later at approximately US$ 15.5m through Norvik. Their loss was, of course, OSL's profit. It is an important part of the claimants' case that this loss was funded jointly by Messrs Urumov, Pinaev and Kondratyuk. In particular, it is the claimants' case that on 22 February 2011 Mr Pinaev, through his company Rossmore, and Mr Urumov, through his company Denning, each transferred the sum of US$ 1m to Gemini's Latvia Krajbanka ("LKB")

account; and that on 23 February 2011, each of Rossmore and Denning transferred a further US$ 500,000 to the same account. According to Mr Kondratyuk this was his share. Subsequently, on 4 March 2011, a sum of US$ 3m was transferred from Gemini's LKB account to its account with Snoras, which was later used to settle the trades with Adamant and Norvik. Thus, it is the claimants' case that Gemini/Snoras did not bear any risk at all and that Messrs Kondratyuk, Urumov and Pinaev in effect funded the loss.

179. Fifth, the evidence of Mr Kondratyuk is that this first trade was a "sucker" trade, conceived and executed by Messrs Urumov, Pinaev and himself, to make it appear to others at Otkritie (including Messrs Lokhov and Popkov) that (i) the warrants were worth around US$ 15 per cent and (ii) trading in the warrants was profitable, with the object of persuading them to authorise a further trade at the same grossly inflated price. This is denied by both Mr Urumov and Mr Pinaev. In particular, both in effect say that they had little direct involvement with the trade and that such involvement as they had was in effect carried out on instructions of Mr Lokhov and/or Mr Popkov. I do not accept that evidence. The contemporaneous documents clearly show that both Mr Urumov and Mr Pinaev had a direct and active involvement in various important aspects of the jigsaw, as referred to above. The most important elements of such direct and active involvement can be summarised as follows.

180. Starting on 18 February 2011, there is a Bloomberg chat between Mr Pinaev and Mr David McCann of BGC when Mr Pinaev specifically asks Mr McCann for details of the size of the market in Argentinean warrants, including daily amounts traded, size of trades and identity of the biggest players. Mr McCann tells Mr Pinaev that a single trade of 100 million is a "conservative average" and that 500 million is an "easy size" in a week. Shortly thereafter, on the same day, Mr Pinaev (and others including Mr Kondratyuk and Mr Urumov) receive various emails from other third parties showing various prices for paper including Argentinean warrants.

181. A few days later, on 22 February 2011, there is a further series of Bloomberg chats between Mr Pinaev and Mr McCann. In particular, during a Bloomberg chat early that afternoon, Mr McCann supplied Mr Pinaev with prices for Argentinean warrants for different denominations including US$ prices for ARS-denominated Argentinean warrants (3.72/3.80) and Mr Pinaev asks for an offer for 1 billion of the peso-denominated Argentinean warrants. Mr McCann's response is that it would be "most difficult" to book such a trade.

182. Later that afternoon, between about 4.22 pm and 5.18 pm, the documents show Mr Pinaev carrying out certain exercises which are not, at least at first sight, easy to comprehend. The first (at 4.22 pm) shows Mr Pinaev emailing himself a test ticket for ARS-denominated Argentinean warrants with a US$/ARS exchange rate of 1:1 and a price of 13.90 resulting in a total cost in pesos of ARS 417m. At 4.45 pm, Mr Pinaev sends himself a test trade ticket confirmation for the above ARS-denominated Argentinean warrants showing a "Dirty PR" of 15 and total costs of ARS 450m for 3 billion Argentinean warrants. At 4.47 pm, Mr Pinaev sends a further test ticket. At 4.48 pm, Mr Pinaev sends himself a further test ticket showing a US$/ARS exchange rate of 1:1. At 4.48 pm, Mr Pinaev sends himself a screenshot of a test ticket for Argentinean warrants using a US$/ARS exchange of 0.248. (This was apparently the correct exchange rate as at 21 February 2011.) Also at 4.48 pm, Mr Pinaev sends to a Mr Erkin Damitov of SJS Markets Ltd a screenshot of a test ticket for Argentinean

warrants showing a US$/ARS exchange rate of 0.248. At 4.49 pm, Mr Pinaev sends himself confirmation of his previous test ticket showing a US$/ARS exchange rate of 1:1 and price of US$ 15 per cent for one million Argentinean warrants. At 4.53 pm, Mr Pinaev sends himself confirmation of the previous test trade he had carried out showing a US$/ARS exchange rate of 1:1 and US$ price of US$ 15 per cent for 3 billion Argentinean warrants. At 5.18 pm, Mr Pinaev sends Mr Damitov a further screenshot. Later, at 6.58 pm, Mr Pinaev sends Mr Damitov a further screenshot with a message asking him to disregard the last ticket and asking him to consider this ticket the correct one showing a purchase of 100,000 Argentinean warrants at a price of US$ 15 per cent with a US$/ARS exchange rate of 1:1. At 7.52 pm, Mr Pinaev sends Ms Melnikayte in Otkritie's front office a screenshot of a ticket for the purchase of 10,000 Argentinean warrants at a price of US$ 15 per cent showing a US$/ARS exchange rate of 1:1. On the following day, i.e. 23 February 2011, there are further Bloomberg chats between Mr Pinaev and other third parties with reference to possible switch purchases of some 10 billion Argentinean warrants at a price of US$ 15 per cent with a US$/ARS exchange rate of about 3:1. Standing alone, it is not easy to understand the precise purpose of these exercises and communications. Mr Pinaev had no satisfactory explanation. To my mind, the clear inference is that Mr Pinaev was experimenting with different possible trades and, more importantly, the possibility of manipulating different exchange rates.

183. Meanwhile, on 22 February, shortly before the buy leg of the first trade was executed, Mr Urumov sent an email to Mr Gherzi with a copy to Mr Popkov and Mr Pinaev stating that he was working on a couple of deals including one for a client who had "*left an order to buy USD100 mm Argnt warrants*" and that "*we will accumulate paper and sell it on Friday*". The email goes on to state that the estimated "PL" (profit/loss) was US$ 3m. The "client" is unidentified in that email. However, the evidence of Mr Popkov (which I accept) is that he was subsequently informed by Mr Urumov that the "client" in question was Threadneedle. This was, of course, untrue.

184. On 23 February 2011, there is a further Bloomberg chat between Mr Pinaev and Mr Sergey Reynov of Banque de Commerce. The purpose of that chat would appear to be Mr Pinaev attempting to persuade Mr Reynov to do a switch-purchase of 10 billion Argentinean warrants from Snoras at a price of US$ 15 per cent with a US$/ARS exchange rate of 3.02. Importantly, Mr Pinaev told Mr Reynov in that chat that Threadneedle held the securities. The reference to Threadneedle holding the securities was untrue and without foundation. Mr Pinaev's evidence was that he had been given that information by Mr Popkov. I do not accept that suggestion. In addition, in that Bloomberg chat, Mr Pinaev said the reason for doing the switch is that the "*stupid Lithuanians cannot do with me direct*". That statement was untrue: as I have said, there were existing trading lines between Snoras and Otkritie.

185. The following day, i.e. 24 February, there are numerous further communications involving Mr Pinaev – although it is unnecessary to consider each in detail. The most significant, in my view, is a Bloomberg chat at 4.07 pm between Mr Pinaev and the Bloomberg Helpdesk. In essence, Mr Pinaev tells the Helpdesk that he is doing a trade with Argentinean warrants and asks them how he can input the ticket with a US$ price. In response, he is told that the Bloomberg price cannot be changed from ARS to USD if the security is set up as denominated in ARS. Mr Pinaev went on to state that the Argentinean warrants in question trade in US$ at a price of 3.7. In my view, this is

very important because it shows that Mr Pinaev knew full well the correct price for Argentinean warrants. About 20 minutes later, Mr Pinaev then sent a test trade ticket to himself for the purchase of 5 billion ARS-denominated Argentinean warrants and then confirmed this, showing a price of US$ 15 per cent and a USD/ARS exchange rate of 1:1. Given what Mr Pinaev had been told by the Bloomberg Helpdesk shortly before, this conduct cannot, in my judgment, be justified on any honest basis.

186. Early the following morning i.e. 25 February 2011, the documents show Mr Pinaev sending himself further test trade tickets for the purchase of ARS-denominated Argentinean warrants using different exchange rates viz 0.2482 and 0.49618. On the same day, i.e. 25 February 2011, at 8.51 am, there is a further important Bloomberg chat between Mr Pinaev and Mr McCann in which Mr Pinaev placed an order for the purchase of 100 million of ARS-denominated Argentinean warrants at a price of US$ 3.67 per cent. In the course of the same Bloomberg chat, Mr Pinaev directed Mr McCann to sell the warrants to "Dima". (The reference to "Dima" or "Dimi" is a reference to Dmitry Posokhov, a trader at Investbank which is a financial institution affiliated with Snoras.) Mr Pinaev also asked Mr McCann to obtain approval for a direct trading line between BGC and Snoras, alternatively to find a switch. In the course of cross-examination, both Mr Pinaev and Mr Urumov sought to distance themselves from Mr Posokhov and Snoras. I do not accept that evidence given, in particular, Mr Pinaev's own comment in another contemporaneous Bloomberg chat where Mr Pinaev described Mr Posokhov as his "*best contact in Snoras*".

187. Initially it would seem that Gemini/Snoras (i.e. Mr Posokhov) was going to purchase the warrants from BGC (i.e. Mr McCann) via Commerzbank, acting as a switch, for US$ 3.69m. However, the documents show that that possible deal was aborted. Ultimately, as appears from the documents, Gemini/Snoras purchased the warrants directly from BGC for US$ 3.69 per cent. During this period, the documents also show that Mr Pinaev was in contact with Mr Posokhov for the purpose of co-ordinating the transaction between Gemini/Snoras and Adamant.

188. It is of some interest to note a further Bloomberg chat a few days later on 28 February containing a somewhat cryptic exchange between Mr Pinaev and Mr McCann when Mr McCann again raises the specific question: "*Why can't we book these trades direct to you??*" In response, Mr Pinaev answers evasively: "*Because*". Mr McCann then responds: "*Haha … you are like a woman …*" Mr Pinaev then states "*Fine settle with me*"; and then Mr McCann responds: "*… because I said so …*". As submitted by Mr Berry, it seems to me that this exchange is particularly telling. The truth is that Gemini/Snoras was an essential part of the jigsaw: it is only with the participation of Gemini/Snoras, including Mr Posokhov and Mr Churin, that the warrants could be round-tripped inflicting an apparent loss to Gemini/Snoras and making a corresponding profit for Otkritie.

189. I have no doubt that Mr Urumov was fully aware of what Mr Pinaev was doing, in particular, because Mr Pinaev was at OSL's London office on 25 February and at the relevant time they were sitting next to each other. Specifically, I am sure that Mr Urumov knew the price at which the warrants were being sourced through Mr McCann. As to Mr Jemai, there is no doubt that he was in regular contact by telephone with Mr Pinaev at this time, and the document shows that he was aware, at least in general terms, of the proposed deal that Mr Pinaev was considering.

190. A little later that day i.e. starting at 12.15 pm on 25 February 2011, there is a transcript of a telephone call between Mr Urumov and Mr Popkov which shows Mr Urumov telling Mr Popkov in general terms about the proposed trade. However, this is in the most general terms. There is nothing in the contemporaneous documents to indicate that Mr Popkov or any other manager at Otkritie knew the details of the first trade until after it was completed on 3 March. That was also confirmed by them in evidence, which I accept.

191. Having arranged the purchase of the warrants by Gemini/Snoras, the documents show Mr Pinaev then arranging the sale of those warrants from Gemini/Snoras to Otkritie via Adamant as a switch. In particular, starting at 1.06 pm on 25 February, there is a transcript of a phone call between Mr Bojidiar Kounov of Adamant and Mr Pinaev to agree on a switch; and shortly thereafter there is a Bloomberg chat between Mr Pinaev and Mr Kounov in which Mr Pinaev placed an order for Argentinean warrants at US$ 13 per cent using Adamant as a switch. Mr Pinaev confirmed to Mr Kounov that the Argentinean warrants were traded in US$. It is common ground that the price of the sale of such warrants from Gemini/Snoras to OSL via Adamant as a switch was at a grossly inflated price i.e. US$ 13 per cent. I am sure that both Mr Pinaev and Mr Urumov were well aware that this was a grossly inflated price i.e. about four times the market price.

192. Later that afternoon, Mr Gherzi sent an email at 5.13 pm to Mr Popkov and Mr Lokhov (copied to Mr Urumov) telling them that "… *we have done another sizeable trade with Threadneedle AM* …" and referring to three other sizeable trades with Threadneedle and further deals in the pipeline including "… .*next week we are hoping to close our most significant trade [of the] year to date and in this regard have been asked by our client to start accumulating a long position in Argentinian sovereign paper* …" The former information was obviously untrue (i.e. there had been no deal let alone a sizeable deal with Threadneedle); and the latter was obviously laying the ground for what became the Second Trade. Mr Gherzi's evidence was that he had been given this information by Mr Urumov. In any event, there is no doubt that Mr Urumov received this email but at no stage did he inform Mr Lokhov or Mr Popkov that the earlier part of the email was untrue as he must have known.

193. During this period, I should also mention that the documents show internal communications between Mr Pinaev and other Otkritie employees including, in particular, Ms Melnikayte (also known as "Masha"), Mr Cherednikov, Miss Nechvolodova and Mr Perlov with regard to execution and implementation of the trade specifically with regard to currency. In particular, Mr Pinaev requested Otkritie's middle office to change the nominal currency of the warrants in Otkritie's internal management system from ARS to US$. In the event, the middle office did not accede to Mr Pinaev's request. As submitted by Mr Berry, the plan to change the nominal currency having failed, the contemporaneous documents show that both Mr Urumov and Mr Pinaev learned how to manipulate trade tickets by inputting manually a false exchange rate so as to inflate artificially the price of the warrants. Mr Urumov also manually changed the prices for the warrants in Otkritie's internal database, i.e. the trader's work station or TWS for short. In an attempt to justify this exercise, Mr Urumov suggested that Mr Pinaev had accessed his own Bloomberg terminal "*to see how the Bloomberg ticket would look if he sent it from a different computer*". In my judgment that is not a credible explanation.

194. In the evening of 25 February 2011, there is a record of Mr Urumov having a conversation with Otkritie's back office telling them there was "*an incorrect set up in Bloomberg*". He then went on to state: "*Everything is being settled in dollars, there is no FX at all, there is just a dollar price, dollar settlement, dollar notional, so we should forget about FX, there is no FX there.*" In my view, there was and is no proper basis for passing on that information to the back office. It was obviously untrue, as Mr Urumov well knew.

195. It appears that it was about this time that Mr Jemai became involved. In particular, according to his evidence, he was instructed by Mr Pinaev to book or accept tickets for the First Trade with an exchange rate of 1:1. This is what Mr Jemai duly did with Mr Pinaev's assistance, but only after he had mistakenly produced a ticket in ARS rather than US$ and was reprimanded in no uncertain terms for doing so by Mr Pinaev. Mr Jemai does not dispute that that is what he did in fact do. However, his evidence is that at that stage, and at all material times thereafter, he was simply doing what Mr Urumov or Mr Pinaev told him to do and that at no stage did he think or even have suspicion to think that anything he was being asked to do or did in fact do was in any way improper, let alone dishonest. I consider Mr Jemai's position separately below.

196. Another important message was sent by Ms Mikhailova to various individuals in the middle office, including Ms Melnikayte, which she subsequently forwarded to both Mr Pinaev and Mr Jemai and which was then subsequently forwarded by Mr Pinaev to Mr Urumov. The email is headed "*Economic sense of the trade*". The email informed the various parties of the conclusion of the First Trade and the payment of US$ 13,020,000 and stated: "*The exchange rate of Peso/dollar according to Middle Office is 1:1. The market value of this bond is 15.5 peso or 3.65 USD.*" The email then went on to raise a question as to whether they should take into account what she describes as the "*cross-rate*" provided by the middle office or the "*official rate*". The email ended by suggesting that maybe they should transfer the deal on to someone else, otherwise they will suffer considerable losses and will come under the attention of the Central Bank. Mr Pinaev's evidence is that, following this email, he assumed that senior management had stepped in to provide the necessary explanations to middle office. As submitted by Mr Berry, it seems to me that that statement is nothing less than a deliberate lie.

197. Further, again as submitted by Mr Berry, Mr Urumov responded in a very misleading way to this email, claiming that he had spoken to Miss Nechvolodova (which he accepted was a mistake) and to Miss Chepeleva (which was untrue). In the event, Mr Urumov forwarded it to Mr Jemai's private email address. On this basis, Mr Berry submitted that it was to be inferred that Mr Urumov, Mr Pinaev (who was in London that day) and Mr Jemai discussed how to respond to Ms Mikhailova's query and agreed a plan to ensure that middle/back office and the risk department accepted the grossly inflated price of the warrants as the market price for internal reporting purposes. Putting Mr Jemai on one side for a moment, I accept that submission. Certainly, the documents show that Mr Jemai spoke to Ms Mikhailova during the course of the day telling her that it was not important what currency the warrants were traded in. He reported this to Mr Pinaev in the course of a telephone call at 2.41 pm on 1 March 2011. As appears further below, this conversation is important and it is therefore worth quoting the relevant part verbatim:

"*Pinaev: Did you see that woman?*

Jemai: Yes.

Pinaev: Did you tell her.

Jemai: Yes.

Pinaev: And what did she respond.

Jemai: … that she doesn't understand anything … [inaudible]

Pinaev: Who has done the Argentinean trade just now?

Jemai: I did.

Pinaev: You transferred it to Gavinic right?

Jemai: Yes, yes. I told her that we were going to close this trade … [inaudible] *… She asked me: "In what currency?" I said that it was not important. It was in dollars and we were closing it now.*

Pinaev: No, it is important! The security is in dollars.

Jemai: [inaudible] *well, she tried …* [inaudible] *I said it should be in dollars as it was agreed already …* [inaudible].

*Pinaev: No mate, you said it all wrong. This security's traded in dollars. It is denominated in peso, but is traded in dollars. Prices are in dollars, for f***'s sake. We have entered the prices in dollars.*

Jemai: Prices … is this one – 13?

*Pinaev: Everything was in dollars, for f***'s sake.*

Jemai: Ahhh … OK. I will tell her; no problem.

*Pinaev: Go and tell her again that everything is in dollars for f***'s sake. The security is being traded in dollars, and market prices are also in dollars, everyone is trading it in dollars. And what she has sent us, three, is utter s**t. I don't know where the f*** she got it from? She can shove it up into her a**e. Tell her that.*

Jemai: OK … [inaudible] *… she said "Our calculations will look differently". I said: "No problem".*

Pinaev: Alright. But now that you have transferred this position, it has disappeared completely."

198. This conversation then continued, the main focus of attention being the position where this security should be held i.e. whether on the bank or with its client, Gavinic. The conversation then ended as follows:

> "*Pinaev: I don't give a f***, it's not my problem? I have just spoken to Chepeleva about this. We should not give a f***. We have just sent an email out. Alright, Zhenka? Just do one FLOW book.*
>
> *Jemai: Do you want me to adjust the system for you so that you can see this security? I can see it so it is OK.*
>
> *Pinaev: No: just do one book for me, Gavinic or not Gavinic – I don't give a s**t.*
>
> *Jemai: OK.*
>
> *Pinaev: Just … so I could see this book, so I could see all of this.*
>
> *Jemai: OK, I will do it now. I will go upstairs and tell her that everything is in dollars.*
>
> *Pinaev: Yes, everything is in dollars, bond/warrant is in dollars. For f*** sake, give me her number, I will call her myself.*
>
> *Jemai: Her phone number is 4727. Mikhailova – 4727 …*
>
> *Pinaev: Wait a second …*"

199. The documents show that shortly after this conversation, Mr Pinaev did indeed call Ms Mikhailova as appears from a transcript of a telephone call starting at 3.13 pm. According to that transcript, Mr Pinaev referred to her earlier email and told her that he had been in touch with the Helpdesk and that the response he got was that he should call the Ministry of Finance of Argentina. However, he then told Ms Mikhailova that he had decided not to call anyone and not to bother with it. The conversation then continued as follows:

> "*Pinaev: So this is probably one of those cases where you will have to accept our quote.*
>
> *Mikhailova: We will have to do what?*
>
> *Pinaev: You will probably have to accept our quote. You will see, at the time of sale, the price for this security. We will be selling it tomorrow or the day after tomorrow. We already have a bid, we are just trying to squeeze the client.*
>
> *Mikhailova: It's quite strange, considering high liquidity of this security that Bloomberg still displays incorrect prices.*
>
> *Pinaev: Well, yes, but this is the case. It is also impossible to make tickets for this security in dollars there* [in Bloomberg?]

> *only in Argentinean pesos. However, only locals who are based in Argentina, can trade in pesos. This security is denominated in pesos but is being traded in dollars, so the tickets are issued in dollars at the rate of 1:1 …*"

200. It is obvious from this exchange that Ms Mikhailova was very confused by what she was being told by Mr Pinaev. According to this transcript, she understood that Mr Pinaev was telling her (as indeed he was) that the price displayed by Bloomberg in Argentinean pesos was "*incorrect*"*;* but, as she stated, that was "*quite strange*". In fact, as Mr Pinaev well knew - in particular from the information he had received from the Bloomberg Helpdesk and also from the fact of the first part of the "round-trip" that he had helped put in place – the price shown by Bloomberg in Argentinean pesos was not incorrect at all.

201. On 1 March, there was a further exchange on which the claimants place particular reliance. This exchange started with an email from Ms Sharipova to Mr Pinaev asking for quotations for the mid-price "*… [indicating the currency!] …*" for the warrants for 25 and 28 February. This was followed by a discussion between Ms Sharipova and Mr Pinaev when Mr Pinaev in effect referred Ms Sharipova to Mr Jemai who, Mr Pinaev said, was "*from our team … he is also a trader … he is a junior trader who usually does this. It's his duty …*" Following that discussion, Ms Sharipova forwarded her original email to Mr Jemai for the relevant information and then sent a further email shortly thereafter asking in addition for the price for 1 March. Mr Jemai responded by email providing the requested quotes with figures of 14.875, 15.125 and 15 for 25 February, 28 February and 1 March respectively. However, these figures were given <u>without</u> the currency. Mr Shamarin then prompted Mr Jemai, requesting him to add the currency to the numbers which he had given. Mr Jemai then responded saying "*Sure*", and adding "*USD*" to the figures. Later, Ms Sharipova asked Mr Pinaev whether he was accepting these prices which Mr Pinaev subsequently did. The claimants say that this exchange is important. In particular, the claimants say that this was all part of a strategy by Mr Pinaev to direct price queries to Mr Jemai pursuant to an agreement or understanding between the conspirators to involve Mr Jemai who (by virtue of his relatively junior status) would, if anyone raised any queries, be able to claim that he was merely following orders. Quite apart from the fact that this is consistent with the evidence of Mr Kondratyuk, the claimants say that the fact that Mr Jemai only gave the figures originally without the currency is significant. In particular, the claimants say that the proper inference is that Mr Jemai was hoping that he could get away without committing the deception to writing. Despite Mr Jemai's protestations to the contrary, it seems to me that there is at least some force in this point.

202. The contemporaneous documents then show that Mr Pinaev made several failed attempts to find a switch company who would agree to off-market terms.

203. Thereafter Mr Pinaev arranged for Norvik to act as a switch between OSL and Gemini/Snoras and persuaded Mr Orlov of Norvik to buy the warrants from OSL at about US$ 15 per cent. As I have already stated, and as is common ground, this was again about four times the market price. Initially (on 2 March), Mr Orlov suggested that the correct price was about US$ 4 per cent; and later (on about 8 March) US$ 3.65 per cent. However, Mr Pinaev responded by saying that this was "*bullshit*" and that there is "*no such price*" (which was untrue as Mr Pinaev well knew) so as to

persuade Norvik to act as a switch on the sale to Gemini/Snoras. In cross-examination Mr Pinaev reluctantly accepted that he had not told the truth to Mr Orlov. His explanation was that he (Mr Pinaev) wanted to get him (Mr Orlov) "*off my case*". Be that as it may, there is no doubt that Mr Pinaev deliberately lied to Mr Orlov.

204. Shortly after the sell leg was executed, Mr Urumov sent an email to Mr Lokhov and Mr Popkov claiming credit for the profit that had been generated viz some US$ 2.5m. Unsurprisingly this created a very favourable impression with both Mr Lokhov and Mr Popkov. In particular Mr Lokhov responded to Mr Urumov's email with the words "*Super! Congratulations!*".

205. As I have stated, it is an important part of the claimants' case that the apparent loss suffered by Gemini/Snoras was in fact funded by Messrs Urumov, Pinaev and Kondratyuk. In particular, the claimants rely upon the payments of US$ 1m each made by Mr Urumov and Mr Pinaev, as referred to above. Mr Kondratyuk's share was initially advanced in equal proportion by Mr Urumov and Mr Pinaev through their respective companies but he (Mr Kondratyuk) repaid them on 15 March. The total amount (i.e. US$ 3m) was in fact in excess of the loss suffered by Gemini/Snoras on the First Trade and, as submitted by Mr Berry, this explains why Gemini subsequently transferred the sum of US$ 395,000 back to Denning, such sum representing the amount of the excess less "commission". The documents show that this payment was made on 30 March 2011. This sum was then split three ways: US$ 131,000 was distributed to each of Mr Kondratyuk (through his company Wandsworth Capital Ltd) and to Mr Pinaev (through his company Rossmore), Mr Urumov retaining the remaining balance of approximately one third for himself. All of these payments and distributions were not in dispute as appears from the agreed Figures 1, 2, 6 and 7.

206. In my judgment, the circumstances relating to these payments (both as a matter of timing and amounts) do indeed strongly support the claimants' case. However, the evidence of both Mr Urumov and Mr Pinaev is that the payments to Gemini had nothing to do with the First Trade and represented an investment by way of a share subscription which, they say, is confirmed and supported by a series of Subscription Agreements. However, it is my conclusion that these purported Subscription Agreements are fakes or shams or both created by or at the instigation of Mr Urumov and Mr Pinaev in order to create a false paper trail. I reach that conclusion for the following reasons:

i) Gemini has confirmed that no shares have been issued to any of the defendants and no instruction has ever been received to amend the share register of Gemini to reflect any issue of shares to the defendants. That is the evidence of Mr Alastair Tulloch, an English solicitor, and company secretary of Gemini. That evidence was not challenged.

ii) Neither Mr Urumov nor Mr Pinaev has produced any acknowledgement of a shareholding from Gemini, any evidence that they were entered in Gemini's register of shareholders, any report from Gemini as to the performance or value of these supposed "investments", nor did they disclose the supposed investment in their affidavit of assets.

iii) It is inexplicable and has not been explained by Mr Urumov or Mr Pinaev why they supposedly acquired and retained interests in Gemini worth US$ 1.5m each, if Mr Kondratyuk was supposed to partake in the investment on equal terms and – as has been accepted as shown in the agreed figures, in particular agreed figure 6.2 and agreed figure 7.1 – reimburse them US$ 500,000 each on 15 March.

iv) The circumstances relating to these supposed agreements are, to say the least, very suspicious. There is no doubt that the various purported Gemini Subscription Agreements are materially identical to a document annexed to what was a genuine offering memorandum issued by Gemini on 1 July 2006. However, the only versions disclosed by Mr Urumov were the front pages dated 15 February 2010, bearing the signatures of Mr Urumov and Mr Pinaev and which Mr Urumov faxed to Clariden Leu on 22 February 2011. On their face, these would appear to be documents adapted by Mr Urumov and Mr Pinaev from the genuine template and emailed to Mr Kondratyuk by Mr Pinaev from an email address purporting to be that of "James Bellevue". In my view, the very strong inference is that these were fake documents. Further versions which would also appear to be fake and bearing signatures of Mr Urumov and Mr Pinaev were also discovered in the Dunant safe deposit box which was exclusively in the control of Mr Urumov and his wife at the material time. As submitted by Mr Berry, these documents would appear to bear the hallmarks of crude, error-filled manipulation. For example, the named subscriber is "Multiasset S.A." (beneficial shareholder of Gemini Advisors Ltd) and the "person authorised to conduct transactions" on behalf of Denning/Rossmore is stated to be Stanislav Kovtun (CEO of Gemini Advisors Ltd). A yet further set of different versions of these purported agreements also dated 22 February 2011, made out in the names of Denning and Rossmore and bearing (respectively) signatures of Mr Urumov and Mr Pinaev that are exact facsimile copies of the versions in the Dunant safe deposit box, were disclosed by Gemini's Latvian bank LKB. The text on these documents would appear to have been modified after the signatures had been applied. Moreover they contain Sri Lankan telephone numbers and fake email addresses for Denning and Rossmore. It is my conclusion that the overwhelming probability is that these documents too are forgeries, which were either produced by Mr Urumov and Mr Pinaev themselves alternatively by Mr Churin or someone else on their instructions with the intention of deceiving LKB about the nature of the payments to Gemini.

207. The conclusions which I have reached with regard to the First Trade as set out above are, in my view, of great significance for a number of reasons at least with regard to Mr Pinaev and Mr Urumov. (I consider later the role of others in particular Mr Jemai.) First, they show that, contrary to their evidence, Mr Pinaev and Mr Urumov were actively involved in the execution of the First Trade. Second, it follows that their evidence to the contrary is, in my view, untrue. Third, I do not consider that there is any possibility that such untruths were innocent. On the contrary, it is absolutely plain that they deliberately lied when they gave evidence. Fourth, they were well aware that the price paid by Otkritie for the warrants on the "buy" side and received on the "sell" side was grossly inflated i.e. between about 3-4 times the market price. Fifth, they deliberately created false documents with regard to their alleged "investment" in

Gemini. In my judgment, there is no doubt that such payments were made to fund the loss suffered by Gemini on the First Trade and, in effect, the apparent profit made by Otkritie. Sixth, the structure of the First Trade, the funding of the "loss" by Gemini and the forging of the documents with regard to the alleged "investment" in Gemini have no honest explanation: they are, in my judgment, inexplicable save on the basis that they were part of some nefarious exercise. Against that backdrop, I turn to consider the alleged Argentinean Warrants Fraud.

Part VI: The Alleged Argentinean Warrants Fraud

208. In this part of this Judgment, I set out the main events and certain of my conclusions with regard to the alleged Argentinean Warrants Fraud. I deal later with the various specific claims against the relevant defendants.

Preparation

209. On 28 February, Mr Gherzi sent an email to Mr Popkov (copying in Mr Urumov) referring to a previous discussion with Mr Urumov. It outlined "*a reverse inquiry*" from a "*tier 1 account*" with whom there was already a considerable amount of business. As stated in the email, the essence of the proposed deal was a "*deposit*" of 400-500 million of Argentinean sovereign paper for 6 months; the intention would be, once the custody account was set up, for the client to move this holding over to their custody account with Otkritie; the client was willing to pass on the economies of the bond with a 1 point discount to market, resulting in a "*positive carry of 4%*"; the expected "*annualised*" P&L would be about US$ 20-25m (i.e. a return of 10-15% p.a.). It was Mr Gherzi's evidence that this email had been dictated to him by Mr Urumov, although this was emphatically denied by Mr Urumov. Be that as it may, the overwhelming likelihood is that, even if the specific words were not dictated, the information contained in the email was provided to Mr Gherzi by Mr Urumov. In any event, since the email was copied to Mr Urumov, there can be no doubt that he (i.e. Mr Urumov) was fully aware of its terms. The email is somewhat curious in that it does not identify the name of the client, although Mr Gherzi's evidence was that the client referred to was Threadneedle. When asked about this in cross-examination, Mr Urumov was, in my view, deliberately evasive, although he accepted that it was "possible" that the client referred to was Threadneedle. In my judgment, it is plain from the contemporaneous documents that Mr Urumov was well aware that the supposed client was Threadneedle.

210. Mr Popkov's evidence (which I accept) was that the information in this email was a significant development in view of the size of the proposed trade and the potential profit expected to be generated; that Otkritie did not trade in Argentinean paper and consequently had no REPO limits in place; that this proposal would thus have to be considered by Mr Lokhov and Mr Popkov; that Mr Popkov had spoken previously to Mr Urumov and Mr Gherzi about a potentially large and profitable trade and he understood that the reference in the email to a "client" was a reference to Threadneedle, an entity that had already been referred to in several emails; that the way that Mr Popkov read Mr Gherzi's proposal was that Otkritie would enter into a buy/sell back or REPO trade, whereby it would acquire the paper from Threadneedle and then sell it back to Threadneedle at the end of the period at an agreed price; and that although there were few details in Mr Gherzi's email, Mr Popkov understood this

to mean that if the value of the paper increased (and this was in the middle of a bull run for Government-backed securities), Otkritie could make a big profit.

211. Mr Popkov's evidence was that, following receipt of this email, he called Mr Gherzi and Mr Urumov to get more details; that they confirmed to him that the counter-party was indeed Threadneedle; that Mr Gherzi and Mr Urumov explained that Threadneedle had some issues with domestic Argentinean custody, which meant that they had to shift temporarily a large volume of paper quickly; that they did not tell him anything about the security at that stage, because they said they were still working with Threadneedle on the detail; that he told Mr Gherzi and Mr Urumov that he was keen to facilitate the trade; and that he asked them to contact Mr Shamarin as they would need input from his team and the Risk Committee. In cross-examination, Mr Urumov said that he had no recollection of any such conversation; but I am sure that a conversation at least on the broad lines as stated by Mr Popkov did indeed take place. In particular, I accept Mr Popkov's evidence that they (Mr Urumov and Mr Gherzi) told Mr Popkov that the intended client was Threadneedle. This is of course important because it is (at least now) common ground that there was no such proposal on the table from Threadneedle at that time nor indeed at any time and, in particular, there was no intention by Threadneedle to enter into any such proposed deal.

212. Meanwhile, it is clear from a number of contemporaneous emails and other documents that Mr Gersamia assisted Mr Urumov and Mr Pinaev to source the warrants in the market and in particular to find a suitable switch for the sale of the warrants from Gemini/Snoras to OSL. In particular, through his Threadneedle Bloomberg account, Mr Gersamia approached a Mr Diego Marynberg (sometimes referred to as "Maradonna"), a trader at a company called Institutional Trading Ltd ("ITL"). Mr Marynberg was not called as a witness but his statement was in evidence. In essence, his evidence (which I accept), supported by the contemporaneous documents shows that on 25 February, Mr Marynberg agreed to prepare the documentation for the proposed trade and to send it to Mr Gersamia; that thereafter Mr Gersamia asked Mr Marynberg to copy in Mr Urumov and Mr Pinaev, whom he (Mr Gersamia) described as his "colleagues/friends"; that Mr Marynberg did not know Mr Urumov or Mr Pinaev but agreed to do what Mr Gersamia asked him to do; that Mr Marynberg then sent the standard ITL Counterparty form to Mr Gersamia, copied to Mr Urumov and Mr Pinaev, asking for the form to be completed and signed by both the buyer and the seller; that on 28 February, Mr Marynberg received an email from Mr Pinaev attaching a completed counterparty form for Snoras, although Mr Marynberg had no contact with anyone from that company; that Mr Marynberg responded to Mr Pinaev later that day thanking him and asking him for the "second counterpart" i.e. the completed counterparty form for OSL; that shortly thereafter Mr Pinaev sent Mr Marynberg an email attaching the completed counterparty form for OSL; and that on 2 March, Mr Marynberg then sent an email to Mr Gersamia copied to Mr Urumov and blind copied to Mr Pinaev attaching draft agreements to form the basis of the proposed sale of 10 billion warrants by Snoras to OSL via ITL acting as a switch counterparty. Appended to each draft agreement was a transaction supplement with details of the trade to be inserted, including the price. The transaction supplement indicated a proposed trade date of 2 March 2011, together with other details.

213. It was the evidence of Mr Marynberg (as set out in his written witness statement) that shortly after sending these agreements he received a call from Mr Gersamia who told him that the arrangement between Snoras and OSL was to sell via a switch 1.65 billion warrants, that the trade was to be settled in US dollars and that Mr Gersamia gave him a US dollar:ARS exchange rate which he (Mr Marynberg) believed was off market; that he immediately informed Mr Gersamia, Mr Pinaev and Mr Urumov that ITL was no longer willing to act as switch counterparty for this trade, because the pricing was too far off-market; that Mr Pinaev said he would look for another switch; and that thereafter, Mr Marynberg had no further contact with Mr Gersamia, Mr Pinaev or Mr Urumov.

214. In the Defence served on behalf of Mr Gersamia and signed by him under a statement of truth, Mr Gersamia denies that he ever introduced Mr Urumov to ITL which, as stated in the Defence, was "*a company which* [Mr Gersamia] *has no recollection of ever having come across prior to service of the Amended Particulars of Claim*". Further, according to that Defence, it is positively asserted by Mr Gersamia that he did not introduce ITL as a potential counterparty; and that he had "*… no involvement whatsoever in relation to the Second Warrants Trade …*". In cross-examination, Mr Gersamia accepted that he had made contact with Mr Marynberg of what he referred to East River Asset Management but <u>not</u> Institutional Trading.

215. On 24 February 2011, there is a somewhat cryptic Bloomberg chat between Mr Urumov and Mr Gersamia. It starts off with Mr Urumov saying "*Let's do Rushydro?*" According to Mr Gersamia, that referred to another possible deal. However, the chat then continues. In places, it is extremely rude and in others it is somewhat cryptic. For present purposes, the important point would appear to be that at one stage Mr Gersamia suggests that they meet outside, because, according to Mr Gersamia, he "*can't talk here*". Mr Gersamia suggests that they meet "*under cover … in dark trench coat …*", and reference is then made by him to a lead character in a popular Russian book. There is a further Bloomberg chat between Mr Gersamia and Mr Urumov the following day, i.e. 25 February, where he (Mr Gersamia) specifically refers to "Maradonna" (which can only be a reference to Diego Marynberg) saying that he (i.e. Maradonna) will send "*the papers*" on "*Wednesday/Thursday*". It seems to me plain that this must refer to the documents referred to above, concerning the proposed switch between Gemini/Snoras and OSL. Towards the end of that Bloomberg chat, Mr Gersamia is recorded as saying to Mr Urumov "*that OK?*" Mr Urumov responds by saying "*Let's speak on the phone later.*" Mr Gersamia then says "*i call u when am out*". Mr Urumov then agrees, saying "*OK*".

216. The claimants rely upon this contemporaneous material. In particular, they say that it shows that Mr Gersamia lied in his pleading and in the witness box with regard to the introduction to Mr Marynberg to assist in setting up the switch with regard to the proposed Second Trade; and that the references in these Bloomberg chats prove this. In my view, Mr Gersamia's evidence in cross-examination was most unsatisfactory – in particular with regard to his attempts to explain why he suggested to call Mr Urumov on a mobile phone out of office hours and to arrange meetings outside of the office if the subject matter of their conversation was *bona fide* and work-related. In my judgment, the very strong inference is that they were indeed discussing the proposed Argentinean Warrants Fraud.

217. In cross-examination, Mr Urumov said that although he knew Mr Marynberg as one of a number of Latin American traders, he had no recollection of any discussions with him at this time and, in particular, did not recall any correspondence which was copied to him about Mr Marynberg acting as a "switch".

218. Mr Pinaev's evidence on this topic is not entirely easy to understand. In particular, his evidence was that he was asked by Mr Popkov to find a switch; that what he (i.e. Mr Pinaev) was doing was sourcing a switch in the market; that one of the people he asked was Mr Urumov; but that he (Mr Pinaev) did not know why he (Mr Urumov) wanted Mr Gersamia or indeed anybody else to help; that he had no idea why Mr Gersamia was helping; and that was a question not for himself but for Mr Gersamia and Mr Urumov. I do not accept that evidence. In particular, I do not accept that Mr Popkov ever asked him or indeed anyone else to find a switch and, it seems to me, that the contemporaneous documents speak for themselves. In particular, it seems to me plain that although Mr Pinaev may have wanted to distance himself from the use of any switch, he was directly involved with Mr Marynberg in so doing; and that Mr Marynberg refused to act as a switch once he realised that the price was way off-market.

219. In addition, the contemporaneous documents show that Mr Pinaev also approached others to see if they would be willing to act as switches with Snoras, including Mr Sergey Reynov of Banque de Commerz and Mr Jacob Pichara of AMM Invest S.A. and also with an individual referred to as "Marian" of Prometeo Investment Services S.A., a Swiss company which is known in the market to act as an intermediary for financial products. None of them agreed to act as switches. In fact, Marian told Mr Pinaev that if the price is "*completely 'off market'*" then it is perceived as "*money laundering*" and that is why she refused to have anything more to do with the trade proposed by Mr Pinaev.

220. In the event, it is common ground, as set out in Figure 4, that Adamant agreed to and did act as the switch on the 'buy' leg of the Second Trade. The circumstances in which Adamant came to accept that role are set out in a written witness statement, put in evidence by the claimants, by Mr Bojidar Kounov who is and was at all material times the Managing Director and one of the shareholders of Adamant. It is unnecessary to set out such circumstances in detail. For present purposes it is sufficient to note that according to Mr Kounov it was only on 9 March 2011 that he received a call on his mobile phone from Mr Pinaev asking him whether Adamant would be prepared to act as a switch party again on a much bigger transaction. According to Mr Kounov, the proposed trade was four or five times bigger than any other trade Adamant had previously executed. Mr Kounov's witness statement sets out in some detail what then happened in the course of 9 and indeed 10 March, in particular with regard to the various tickets that were prepared by Mr Jemai, which I refer to briefly below when I deal with events on that day.

221. For present purposes, it is sufficient to note that there was no objective commercial reason to use a switch at all because OSL had trading lines in place with Snoras. In my judgment, as submitted by the claimants, the proper inference is that the purpose of the switch was to disguise from Mr Popkov and others at Otkritie the true identity of the ultimate seller (i.e. Gemini/Snoras) and to mislead them into believing that it was Threadneedle.

222. It is also convenient to note at this stage that the contemporaneous documents show that the warrants for the Second Trade were sourced by Mr Pinaev with the assistance of Mr Posokhov and Mr McCann and were purchased by Gemini/Snoras at the market price from various third parties including RBS, BGC (UK), Barclays and ICAP (UK). The details appear from Figure 3. I should mention that in the course of cross-examination, Mr Pinaev came up with the suggestion that Mr Popkov had instructed him at an unspecified time in an unspecified manner to source 10 billion warrants in the market for a different deal. Mr Pinaev maintained that this occurred during a conversation with Mr Popkov that took place at or shortly after a lunch at the Gaucho Grill. However, this finds no support whatsoever in the contemporaneous documents; nor is it mentioned in any of Mr Pinaev's witness statements; nor was it ever put by Mr Peto to Mr Popkov in cross-examination. In my judgment, as submitted by Mr Berry, this is a late invention.

1 March – the video conference

223. On 1 March, the claimants say that there was an important video conference attended, according to the claimants' witnesses, by in particular Mr Urumov, Mr Gherzi, Mr Popkov, Mr Shamarin, Mr Katorzhnov and Mr Khalikov. Originally Mr Urumov did not admit (but did not deny) that he participated on this video conference. However in the course of his evidence, he positively asserted that he did not. I do not accept that evidence. In my view, the overwhelming probability is that he did participate in such conference. The fact is that all of the relevant Otkritie witnesses positively (and very strongly) recall that Mr Urumov was indeed present on that call. In my judgment, that evidence was entirely credible and there is no reason whatsoever to disbelieve them. The contemporaneous documents also point strongly to that conclusion. Further, it seems to me inherently unlikely that Mr Urumov would have left Mr Gherzi on his own to explain the details of a trade of this size to Mr Popkov and Mr Shamarin.

224. The evidence of those Otkritie witnesses (which I accept) can be summarised as follows. Mr Gherzi introduced the video conference and then Mr Urumov took over. Mr Urumov explained the details of the proposed trade (including on the telephone call which happened shortly after: see below) as follows:

i) They had negotiated a significant deal with Threadneedle, a very important new client. The goal was to set up a long-term profitable relationship with a top-tier account.

ii) Mr Urumov had already promised the deal to Threadneedle. It was urgent and, unless Otkritie agreed to enter into the trade and did so quickly, they risked losing Threadneedle's business.

iii) The terms of the proposed trade, as explained by Mr Urumov (including on the telephone call which happened shortly after: see below), were as follows:

iv) It would be a buy/sell, not technically a repo. There would be an immediate purchase from, and a forward sale back to, Threadneedle. The forward trade was an essential part of the deal. Although Threadneedle would not sign a long-term confirmation, they would enter into a forward contract and create a Bloomberg ticket to that effect.

v) The volume would be US$ 400-500m (on which a P&L of US$ 20-25m would produce a return of 10-15% p.a.) This was later halved: see below.

vi) Otkritie would hold the warrants for six months, although the forward trade could close earlier. Strictly, it would be on the basis T+1 month, but rolled over for six months. Barring any exceptional circumstances, therefore, the sale back would take place in September.

vii) The purchase price would be at a discount to the market (thus Otkritie would believe that it had adequate collateral in excess of the purchase price).

viii) Otkritie would not be permitted to repo the warrants in the market, because Threadneedle might wish to repurchase early (the intention and obvious consequence of this arrangement was that Otkritie would not discover the true market value of the warrants).

ix) Threadneedle was engaged in a short-sell play against Argentinean banks, and it needed urgently to move the paper to someone else as a temporary measure. It was therefore very keen to keep its large position in the warrants confidential from the market.

x) Because of the urgency of the situation, Threadneedle would pay well. Mr Popkov said he wanted a minimum return of 8% p.a. Mr Urumov said Threadneedle would pay a price producing revenue of 14% p.a.

1 March – the telephone call between Mr Urumov, Mr Gherzi and Mr Popkov

225. Following the video conference in the morning, there was an important further telephone call in the early afternoon (1.50 pm London time) between Messrs Popkov, Urumov and Gherzi. Unlike the video conference, the call was recorded and therefore there is a transcript. At first, Mr Urumov called Mr Popkov on his mobile, asking him to help get the deal, i.e. the Second Trade, done with Threadneedle, and that the deal had been promised to Threadneedle. Mr Popkov then called Mr Urumov back on a recorded landline. The transcript of that call is lengthy and, although important, I do not propose to set it out verbatim. The essential points that emerge from the call are as follows:

i) Mr Urumov spoke most of the time and Mr Gherzi very little. The impression given was that Mr Urumov was in charge of the transaction with Threadneedle, and was in the process of negotiating it with his contact at Threadneedle. This was, and was known by Mr Urumov, to be untrue.

ii) The deal would involve a spot purchase from, and a forward sale to, Threadneedle. Mr Urumov told Mr Popkov that Threadneedle had already agreed that they would, on the trade date, execute a forward contract. Mr Urumov asserted that Threadneedle was not prepared to sign a GMRA or any other long-term contract but agreed to make a purchase through an offshore switch and a forward sale with a contract to be executed by accepting a Bloomberg ticket. This was, and was known by Mr Urumov to be, untrue.

iii) Mr Urumov told Mr Popkov that the securities would, or at least might, be bought by Otkritie at a discount to market value. Mr Urumov was thereby leading Mr Popkov to believe that the warrants would be worth more than the purchase price, so there would be a margin of security in case the deal went awry after the inward purchase, enabling Otkritie to sell the warrants in the market and recover their outlay. This was, and was known by Mr Urumov to be, untrue. (Mr Urumov later on 4 March put a figure on the market price (US$ 15.5-16), and the margin (3 figures) which was, and was known by Mr Urumov to be, untrue.)

iv) Mr Urumov led Mr Popkov to believe that Threadneedle desired confidentiality; that he feared leaks by Mr Shamarin or his department; and that it was important that the trade was executed without any market leaks. Given that Threadneedle was not, as Mr Urumov well knew, involved at all, none of this was true. In truth, the only plausible explanation for not disclosing the ISIN was to reduce the risk of someone checking the true value of the warrants before OSL entered the transaction and because Mr Urumov feared that the intended fraud might be discovered. Mr Urumov used this (false) excuse to explain his reluctance to provide Mr Shamarin with the ISIN for the warrants. Mr Popkov was willing to go along with this to the extent that he countenanced Mr Shamarin being given an incorrect ISIN number. As Mr Peto submitted, this shows that Mr Popkov was prepared to deceive Mr Shamarin; and I accept that the fact that Mr Popkov was prepared to engage in such a deceit is relevant to Mr Popkov's general credibility. However, whilst not condoning such conduct in any way, it is important to note that, so far as Mr Popkov was concerned, the purpose of such deceit was simply to prevent or reduce the risk of a market leak and to assist in the execution of what he thought would be a profitable deal for Otkritie. In addition, of course, I should note that there is no suggestion that Mr Popkov would thereby obtain any secret monetary gain by such conduct.

226. During the call, Mr Popkov said that he understood that "*with the contracted story no one is going to do 8% annually*". This reference is perhaps somewhat ambiguous but in context it seems relatively plain that the reference to 8% p.a. is to the <u>minimum</u> annualised return which Mr Popkov required to authorise the Second Trade. That was his evidence in the Swiss proceedings and also at this trial which I accept. However, according to Mr Popkov's evidence, he was told by Mr Urumov in the earlier video conference and in later calls on 3, 4 and 9 March that Threadneedle agreed to pay 14% p.a. over six months; and that was the revenue which Mr Popkov (and Otkritie) believed would be produced by the Second Trade. That was disputed by Mr Urumov; but I accept the evidence of Mr Popkov on this point for three main reasons. First, as I have stated, I found Mr Popkov an entirely credible witness; whereas that was not the case with regard to Mr Urumov. Second, when, as appears below, Mr Popkov authorised the Second Trade including the forward trade to Threadneedle, it seems to me inherently improbable that he would not have had in mind (even approximately) the profit that Otkritie would make. Third, again as appears below, the tickets which were entered into Otkritie's system (after correction) on the instructions of Mr Urumov produced a rate of return which was equivalent to exactly 14% pa.

227. It is also plain from the transcript of this call that Mr Popkov was confused about at least certain aspects of the proposed deal. In response, Mr Urumov said that "we" will speak to "him" now and that Sasha (i.e. Mr Gherzi) would be meeting "him" that night. Mr Popkov then told Mr Gherzi to make sure that he discussed all questions with "him" and to explain to "him" what was needed. Mr Gherzi answered by saying "*yes, yes, yes … I wrote down everything here, I will go through it with him point by point, will ask him what he is happy with and what he is not*". To my mind, Mr Gherzi's oral evidence in this context was very unsatisfactory. In cross-examination, Mr Gherzi accepted that the "him" in this part of the call was a reference to Mr Gersamia. However, he (i.e. Mr Gherzi) denied that he (i.e. Mr Gherzi) could or ever did discuss what he described as the "specifics" of the intended trade with Mr Gersamia because, according to his (i.e. Mr Gherzi's) evidence, he (Mr Gherzi) did not know what the specifics were. In broad terms, that is consistent with what Mr Gherzi stated in para 32 of his witness statement viz that he was not scheduled to and did not meet any "client" to discuss everything as the deal was being arranged by Mr Urumov and Mr Pinaev direct with Mr Gersamia. However, despite Mr Gherzi's protestations and in particular his attempts to distance himself from the proposed deal, that evidence is difficult, if not impossible, to reconcile with what appears in the transcript of this telephone call which, in my view, shows, at the very least, that Mr Gherzi was (with Mr Urumov's encouragement) telling Mr Popkov that he would meet the client and go through the proposed deal "point by point". It is also inconsistent with an email which Mr Gherzi sent later in the afternoon on 1 March to Mr Katorzhnov saying that the client had asked not to give out the details of the security until the basic parameters of the deal had been discussed and that he (i.e. Mr Gherzi) would be meeting the client "*tonight*" to agree on the points discussed during the video conference. In response, Mr Katorzhnov sent an email explaining that the funds available for the large trade with Threadneedle were US$ 150-200m "*as has been voiced out on the conference call*". Mr Katorzhnov's email made it clear that, as far as he was concerned, the individuals in charge of the apparent deal with Threadneedle were Mr Urumov and Mr Gherzi. In my view, that was indeed the case – or at least that was the perception which both of them i.e. Mr Urumov and Mr Gherzi gave to all concerned on the Otkritie side. All of this strongly suggests that Mr Casella is right in saying that Mr Gherzi was a Machiavellian character; and lends independent support to Mr Kondratyuk's evidence that Mr Gherzi was not the innocent fall guy that he pretended to be when he gave evidence in court; that he was in fact an important party to the fraud; and that the sum of in excess of US$ 2.5m which he subsequently received was reward for the role he played in the fraud. At the very least, it is my conclusion that Mr Gherzi was less than frank in evidence and that he knew much more about what was going on than he pretended in the course of giving such evidence.

1 March email from Mr Urumov

228. Very shortly after this call, Mr Shamarin emailed Mr Urumov asking for the ISIN of the warrants and the exact name of the counterparty (Threadneedle being part of a large group of companies with similar names). That email reads as follows:

> "*Subject "cli"*
>
> *Anton, everything is not so simple. If the client were prepared to sign the GMRA and do everything according to the ICMA, then*

he would have probably not been paying US25,000,000 USD. We can't have our cake and eat it too. We are a new girl on this street and cannot be dictating our own terms. Sasha [i.e. Mr Gherzi] is supposed to be meeting the client and discuss everything. I think it should be more clear in the evening what kind of information we can give you."

229. This is an important contemporaneous email from Mr Urumov. As submitted by Mr Berry, it contains a number of features which are, to say the least, curious as well as certain other statements which, on their face, are untrue and must have been known to be untrue at the time by Mr Urumov. In particular:

i) It is at least curious that Mr Urumov changed the original subject of Mr Shamarin's email i.e. "*Threadneedle*" to "*cli*". The latter would almost certainly seem to be a typographical error for "*client*" as Mr Urumov accepted. In cross-examination, Mr Urumov also said that he did not think that he had changed the subject title. However, it seems to me that he must have done that and that this must have been a deliberate action on his part. There is no other plausible explanation. The question then is: Why? In my view, the only plausible answer is that he was seeking to avoid committing himself on the documentary record to saying that he was proposing a deal with Threadneedle.

ii) Further, Mr Urumov did not provide the information sought by Mr Shamarin but rather suggested instead that Mr Gherzi was supposed to be meeting the client and that it would be clearer in the evening what kind of information was available. A similar suggestion, i.e. that Mr Gherzi would meet with "him" that night, was also made by Mr Urumov (and assented to by Mr Gherzi) in the course of the earlier telephone call between them and Mr Popkov. This is of course untrue. There never was any intended deal with Threadneedle and, in any event, it was Mr Gherzi's evidence in §32 of his witness statement that he was not scheduled to and did not meet any "client" to discuss everything as the deal was being arranged by Mr Urumov and Mr Pinaev direct with Mr Gersamia.

iii) In the email, Mr Urumov repeatedly refers to "*the client*" plainly intending Mr Popkov and Mr Shamarin to believe that there was a genuine deal in the offing with Threadneedle. As submitted by Mr Berry that was plainly a lie.

iv) Mr Urumov reiterated that the client was not prepared to sign a GMRA (a standard form contract for one form of forward trade), intending Messrs Popkov and Shamarin to believe that Threadneedle had agreed to conclude a buy/sell deal discussed in the video conference, but only on their own terms. Again, as submitted by Mr Berry, that was a lie.

v) By referring to a potential return of "25,000,000 USD", Mr Urumov was plainly intending Messrs Popkov and Shamarin to believe that the client Threadneedle had agreed to a deal which would earn Otkritie revenue of US$ 25m (equivalent to a return of 10-15% p.a.). That also was a lie.

230. As I have already mentioned, certain of the defendants (in particular, Mr Urumov, Mr Pinaev and Mr Gersamia) have made several unsuccessful attempts to implicate more

senior officers of Otkritie in the fraud. One particularly egregious example is Mr Pinaev's reliance on a forged email chain, supposedly between Mr Lokhov and Mr Popkov on 1 March 2011, which purports to show that Mr Lokhov and Mr Popkov were aware of Gemini's involvement in the Second Trade. The undisputed evidence of the claimants' computer forensics expert is that the emails have been fabricated. Mr Pinaev's suggestion in the witness box that "*this is something done by the claimants*" (i.e. a double bluff) is, in my view, not credible – and it was never put in cross-examination to either Mr Lokhov or Mr Popkov. The claimants say that the proper inference is that it was Mr Pinaev who fabricated these emails. They may well be right although there is no positive evidence to show that that is indeed the case.

Persuading management to approve the Second Trade

231. I do not propose to analyse in detail all the communications and steps which culminated in the Second Trade on 9 March. For present purposes, it is sufficient to note certain highlights.

232. These start with a series of emails on 3 and 4 March when, in my judgment, Mr Urumov deliberately misled Otkritie's management. Thus, on 3 March at 1.21 pm, Mr Urumov sent an email to Mr Lokhov and Mr Popkov stating that "*we have just sold Argentina and have realised a PL + USD 2,500,000*". The email also stated: "*Please calm down Shamarin as he is starting to get on my nerves. I just do not have the time to deal with this correspondence 20 times a day … I am off to a meeting with the client …*" The opening part of that email was plainly a reference to the First Trade. Given my conclusions with regard to such trade as stated above, such statement was in my view obviously false (and known to be false by Mr Urumov) to the extent that it gave the impression that such trade was genuine (when it was not) and that it had realised a handsome profit in excess of US$ 2.5m (when, in truth, such profit was, as I have found, entirely illusory and had been funded by Mr Urumov, Mr Pinaev and Mr Kondratyuk). Mr Urumov's obvious intention in sending that email was to persuade Mr Lokhov and Mr Popkov that there was money to be made in trading the warrants at prices above US$ 13 per cent and to persuade them to override the concerns about the intended Second Trade then being voiced by Mr Shamarin. The last sentence (where Mr Urumov says he is "off to a meeting with the client") is also false or at least highly misleading to the extent that it suggests (as it plainly does) and was obviously intended to suggest that Mr Urumov was off to a meeting with Threadneedle but, of course, Threadneedle had not been a "client" in relation to the First Trade.

233. On 3 March at 4.18 pm, Mr Urumov sent a further email to Mr Lokhov and Mr Popkov as follows:

> "*So the meeting with the client in regards to our deal and custody went not as expected. I was told to fuck off to put it mildly. He told that he already has an offer from the competitor for whole volume. While we were making a decision and were meeting with risks etc, other guys outplayed us. He asked why we told him that we can do this if our risks are not allowing us to do this. I kinda told him that we can also [do this], but for lesser sum. All in all he told me that he is not a charity to pay us USD 3 million per deal. He says that we can't do anything, have*

> *to give him back this PL somehow by offsetting on account of another deal. Otherwise he will not open custody nor dvp lines and will mark us in BLACK BOX. This will be complete disaster. Basically very bad situation. Me and Sasha had very big plans in regards to this client – PL + USD25 million and Custody 1BN. This cannot go on like this. How are we going to handle this? I think Sasha will have to really kiss the client's ass to somehow sort this out. On the whole, if we manage to come to an agreement with the client for partial volume, and then we back down, then we will have no business from this client. Plus he will really damage our reputation on the market! We are not yet goldman sachs and cannot afford to do this. After today's fiasco, Sasha barely managed to convince him to meet again tonight. What do I tell him?*"

234. This email contains a number of false statements, as Mr Urumov well knew, including his statement that he had had a meeting with the client (which did not happen) and that the client was extremely dissatisfied with what he perceived to be Otkritie's backtracking (which was false). The email corroborates Mr Popkov's evidence that Mr Urumov had told him that he had promised the deal to Threadneedle: "*He asked why <u>we told him that we can do this</u> if our risks are not allowing us to do this.*" Moreover, as it seems to me, the email was designed to make Otkritie's management believe that the First Trade was with Threadneedle; that Otkritie made a genuine profit of US$ 3m on the First Trade; that Mr Urumov and Mr Gherzi (on behalf of Otkritie) promised Threadneedle a larger trade, consisting of buy and sell legs; that unless Otkritie was willing to do the bigger trade, then it would have to pay back the US$ 3m it earned on the First Trade; that if so, Otkritie would lose all hope of developing Threadneedle's business and that would be a disaster; and that Mr Urumov and Mr Gherzi had arranged a further meeting with Threadneedle, at which an agreement "*for partial volume*" (i.e. part of the US$ 400-500m proposed originally) might be reached. As submitted by Mr Berry, each of these (express or implied) statements was false, designed to persuade Mr Lokhov and Mr Popkov to authorise what became the Second Trade.

235. Further, the foregoing is consistent with the evidence of Mr V Belyaev which I also accept. In particular, it was his evidence that although Mr Popkov did mention to him in around mid March 2011 a large and potentially very profitable deal that Mr Urumov was working on, he did not ask for any particular details; and was never asked to approve this trade. So far as he was concerned, approvals for any trades were in the hands of Mr Popkov and Mr Lokhov.

236. Mr Popkov's evidence (which I accept) is that on 3 and 4 March, Mr Urumov re-confirmed that the price he had agreed for the Second Trade would produce revenue of 14% p.a. On that basis, Mr Popkov authorised Mr Urumov to conclude a deal on the terms set out by Mr Urumov in the Videoconference and on the call on 1 March, viz spot purchase (for c. US$ 200m) and a forward sale in six months' time (for a price that would generate 14% p.a. and in any event not less than 8% p.a.: if the deal closed earlier, the price would be adjusted to generate the same annualised return).

237. In the morning on 4 March, Mr Popkov emailed Mr Urumov asking him for the description of the deal when "*you have agreed everything*". This email makes plain

and it was confirmed by Mr Popkov in evidence that Mr Popkov believed that Mr Urumov was going to meet the client to actually agree the terms of the deal. I accept that evidence. I am also satisfied that Mr Urumov understood that this was the case and that Mr Popkov would then forward the agreed terms to the risk department stating that it has been approved. No further approval (e.g. by the Financial Committee or by the shareholders) was necessary.

238. Later on 4 March, at 3.47 pm (London time), Mr Urumov emailed Mr Popkov the terms of the deal that had (supposedly) been agreed with Threadneedle. The email was copied to both Mr Pinaev and Mr Gherzi and stated as follows:

> "*Dima hi,*
>
> *After having thoroughly polished the client's bottom we have agreed the following terms:*
>
> *1) Price of the deal: market minus 3 figures (12% in the context of today's market 15.5-16, this is 20% discount.*
>
> *2) ISIN ARARGEO3E147*
>
> *3) volume 1650M, in cash at today's prices 206.25 million dollars.*
>
> *4) trade 09/03/11 T+3, settlement 14/03/11*
>
> *5) monthly rollover*
>
> *6) 6 months term (depends on custody account opening procedure.)*"

239. This is a crucial email because, on its face, it refers to terms which have been "agreed". However, the contents of the email are, in some respects, less than clear.

240. First, it does not specify the counterparty – although given the earlier discussions and emails as referred to above, I have no doubt that both Mr Urumov and Mr Pinaev intended that it should be understood as referring to Threadneedle – as Mr Popkov did in fact understand it to be.

241. Second, it does not in terms state that the deal involves both a "buy" and a "sell". However, in my view, it is plain that that is the nature of the deal being described in this email. In particular, the first four paragraphs plainly refer to a "buy" transaction whereby Otkritie agreed to buy 1650m warrants at a 20% discount from the market value for a total cost of US$ 206.2m; and that is what Mr Popkov understood. As it seems to me, the last two paragraphs i.e. paras 5) and 6) must refer to the "sell" side involving a "monthly rollover" and a "6 months term".

242. It was Mr Urumov's evidence that this email did not refer to any done deal on the sell side and merely described a potential future sell transaction. On that basis, Mr Peto submitted that although the claimants may have purchased the warrants in the expectation that there would be a forward trade with Threadneedle, they cannot have believed that such a sale had already been agreed prior to purchasing the warrants. I

readily accept that at the date of that email there was no concluded contract - either on the buy side or the sell side. However, in my judgment, it is absolutely plain that the representation made in that email was not simply a statement as to an expectation of what would be agreed but what had in fact been agreed. In my judgment, paras 5) and 6) of that email plainly refer - and were intended by Mr Urumov to refer - to a sell transaction that had, at least in principle, been agreed (subject to approval): that must be so not only from the terms of the email itself but also given the preceding discussions as summarised above. Mr Urumov's evidence to the contrary is, in my judgment, disingenuous in the extreme. Notwithstanding, I accept that the expression "monthly rollover" is ambiguous i.e. it is unclear as to what was to happen on the supposed sell side at the end of each month, and in particular, whether it was Otkritie or the "client" (i.e. Threadneedle) who had the right to "rollover". Equally, I agree that the reference to "6 months term (depends on custody account opening procedure)" lacks clarity. The evidence on this was somewhat confused, although such confusion is perhaps readily explicable because there was, of course, no "sell" at all whether to Threadneedle or any other party. In particular, it was Mr Popkov's evidence that the "monthly rollover" meant that the resale to the client (i.e. Threadneedle) would be reviewed every month so "*… we could terminate if market risk increased …*"; and that (if not previously terminated) the term of the trade was 6 months "*… or perhaps a little longer if the paper was ultimately placed in a custody account on behalf of Threadneedle*". In addition, I should mention that it was Mr Urumov's suggestion in evidence that a termination of this type could not be made without necessary DVP lines and other confirmations with Threadneedle in place. However, as Mr Urumov told Mr Popkov during the call on 1 March, the intention was to have a confirmation from Threadneedle on Bloomberg and that this would constitute a binding obligation; and I accept Mr Popkov's evidence that that is indeed what he understood and that it was not necessary to have trading lines with Threadneedle before the trade. Another suggestion made by Mr Urumov in evidence was that a forward trade in these warrants was not possible. The basis of that assertion is not clear to me; but in any event, it was Mr Popkov's evidence (which I accept) that he had no reason to doubt that it was perfectly possible to buy these warrants and to sell them back to Threadneedle at a future date.

243. Third, the email does not state the price payable on the sell side by Threadneedle. I agree that this is a somewhat surprising omission. However, as noted above, I accept Mr Popkov's evidence that he had previously told Mr Urumov that he required a <u>minimum</u> return equivalent to 8% p.a. and Mr Urumov had already told him that Threadneedle agreed to pay 14% p.a.

244. Despite these points, it is in my view clear that by this email Mr Urumov intended Mr Popkov (and others who were likely to see this email, including Mr Lokhov and those in the Risk Department) to believe that (i) there was an agreed deal involving <u>both</u> a buy and sell with Threadneedle, and (ii) the current market price of the warrants was US$ 15.50-16 per cent, which were both lies as Mr Urumov well knew.

245. It is also clear that such lies induced Mr Popkov on behalf of OSL to authorise the Second Trade in the terms of his email at 8.32 am on 9 March stating "*… on the basis of my authority, I have approved the following transaction*", adopting all the terms set out by Mr Urumov in his email of 4 March and adding only a last new paragraph: "*Counteragent Threadneedle (will clarify the precise name)*". That email was sent by

Mr Popkov to Mr Shamarin, Ms Kuzina and Mr Predtechensky. It was forwarded to Mr Urumov the same day; he did not demur – in fact he responded to an email later in the same chain. Any suggestion that he did not read Mr Popkov's email or understand its significance is, in my judgment, untenable.

246. Mr Peto submitted that regardless of any misrepresentations which may have been made, they were never in fact relied upon by Otkritie and that it was, in effect, absurd to suggest that they were. This submission had various strands. For example, Mr Peto referred to certain internal documents (including a draft internal report compiled shortly after 9 March 2011 (referred to as the "DAUR report"), an email from Mr Lokhov dated 11 March, other reports dated 11 and 14 March and a P&L spreadsheet) as well as certain parts of the evidence of Mr Lokhov and Mr Popkov which he said showed, in effect, that the profit which would be generated on the buy/sell was so huge that the claimants could not have believed that a legitimate enforceable forward trade in fact existed at that time or indeed at any time; and that, in truth, they did not hold such a belief. In further support of that submission and jumping ahead in the chronology, Mr Peto drew attention to certain parts of the evidence after the Second Trade was concluded which, he said, indicated that both Mr Lokhov and Mr Popkov had (at the very least) doubts as to whether a forward trade had been concluded. In that context, he submitted that this showed that they did not believe that the forward trade existed; and that their failure to take proper steps to verify the position either by making further internal checks within Otkritie's systems or by direct enquiry of Threadneedle (which, submitted Mr Peto, could easily have been done by email or otherwise) indicated at the very least such ineptitude as undermined their evidence. (In truth, this latter submission was a watered down version of the *ex turpi* plea which Mr Peto had sought unsuccessfully to introduce by way of his amendment application.) Further, Mr Peto submitted that ordinary common sense and commercial prudence cried out against the idea that Otkritie could have entered into a transaction worth a quarter of a billion dollars (about half of OSL's balance sheet) simply on an oral assurance that written confirmation existed (or would exist) but never asked for sight of the document recording the confirmation from Threadneedle or made proper enquiry of Threadneedle.

247. It is fair to say that that after the Second Trade was concluded, Mr Lokhov did have some concerns about Otkritie's systems and its own internal "documents" with regard to such trade and, as appears below, he decided to raise this directly with Mr Gersamia. It is also fair to say that Mr Popkov frankly accepted in effect that the fraud might have been discovered earlier if he had done things differently. However, I do not otherwise accept Mr Peto's submissions as summarised in the previous paragraph. In particular, for reasons which it is unnecessary to explore in detail, the reliance placed by Mr Peto on the internal documents and evidence referred to above was, in my view, misplaced; and, in fact, the expected profit on the deal was not "huge" as Mr Peto originally suggested but, as explained further below, equivalent to 14% per annum. In any event, I have no doubt that Mr Lokhov continued throughout to rely on the assurances given by, in particular, Mr Urumov – as did Mr Popkov. Further, I am satisfied that Mr Lokhov and Mr Popkov did indeed honestly believe in the representations made and that the Second Trade involved both a "buy" and "sell" leg and continued to hold such belief until August when the balloon went up.

248. The evidence of Mr Kondratyuk was that about this time, i.e. in early March, there was an important meeting between himself, Mr Pinaev and Mr Jemai at the Leopard bar in Geneva when details of the intended fraud were discussed and finalised. In particular, it was Mr Kondratyuk's evidence that Mr Pinaev said that 9 March 2011 was the ideal day for the fraudulent trade, because Mr Urumov would be in hospital; that it was agreed that (i) Snoras/Gemini would buy the warrants at the market price; (ii) Snoras/Gemini would sell the warrants to Adamant at four times the market price; and (iii) Adamant would sell the warrants to Otkritie at four times the market price; that Mr Pinaev suggested that, in order to deceive Otkritie as to the price of the Warrants, he would ask Quickline (a Russian broker) to fabricate a screenshot showing the inflated US$ price; that Mr Pinaev showed Mr Jemai Bloomberg screenshots and explained how to make false entries in the Bloomberg system; and that Mr Pinaev explained that the proceeds of the fraud would be channelled through Gemini with the assistance of Mr Churin, a friend of Mr Urumov and Mr Pinaev. Both Mr Pinaev and Mr Jemai denied that any such discussions had taken place. Mr Jemai denied attending any meeting at this bar. However, this is contrary not only to the evidence of Mr Kondratyuk but also to the recollection of Mr Giovanna of Bordier who gave evidence to the Swiss prosecutor. In any event, Mr Jemai accepted that in early March, shortly before the Second Trade was executed, he spent what he described as a "mega-weekend" skiing with Mr Kondratyuk in Courcheval. According to his own words: *"…I'm just in heaven with Sergey now…"*

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249. Pursuant to the authorisation given by Mr Popkov as stated above, the Second Trade was executed in the course of Wednesday 9 March. The evidence of Mr Kondratyuk is that he had agreed in advance with Mr Urumov and Mr Pinaev that they would all stay away from the office on that day (i.e. 9 March 2011) when it was executed. The claimants say that (consistent with the evidence of Mr Kondratyuk) Mr Urumov deliberately arranged to be away on that day in order to enable him to say later that he was absent from Otkritie's offices on the day when the Second Trade was made and that he was not involved in it. This is denied by Mr Urumov. In any event, Mr Urumov's evidence is indeed that he was away that day and that he knew nothing of the purchase of the warrants on that day. In particular, it is Mr Urumov's evidence that he was in the Princess Grace Hospital in London on 9 March; that he had previously been admitted 2 days earlier i.e. on 7 March; that he had had an operation that evening (i.e. on 7 March) for surgery for cancer which involved the total removal of his thyroid gland; that he spent the following day recovering from the general anaesthetic and the next few days feeling very unwell; that given the pain and discomfort, he was not able to speak at all for a day or so and not beyond a whisper for about a week; that he did not use a telephone while in hospital; and that he had no involvement in the exchanges between Mr Popkov, Mr Jemai and the Risk Department on that day and "*no involvement in the purchase of the Argentine paper*".

250. At 8.05 am on 9 March, Mr Pinaev sent an email to Mr Jemai copying Mr Urumov's email of 4 March (see above); and shortly afterwards (at 8.07 am) another email telling him to ask Mr Sergeev for authorisation as Mr Urumov was ill and he (i.e. Mr Pinaev) was "*also not feeling well at home*". The claimants say that Mr Pinaev was in fact pretending to be ill at home in order later to claim that he had not executed the final trade. That may well be right although (like many points in this case) it is

impossible to say whether that is true or not. In any event, there is in my view no doubt that Mr Pinaev did in fact go into the office later that day as demonstrated by a recorded conversation on the office line between him and Mr Popkov.

251. There was much dispute about what, if any, conversations there were between in particular Mr Urumov and Mr Pinaev on 9 March. Despite Mr Urumov's evidence as stated above that he was unable to speak or at best only able to speak in a whisper and that he did not use a telephone while in hospital, the claimants say that Mr Urumov was in active communication by phone with, in particular, Mr Pinaev on that day. Specifically, the claimants say that the phone records show that Mr Urumov received no less than 16 calls from Mr Pinaev alone on his (i.e. Mr Urumov's) private mobile telephone (07957 352109) and not his Otkritie mobile (07554 880352); and that it is to be inferred that Mr Urumov used this phone to make it harder for Otkritie to trace the calls. In particular, it is the claimants' case that Mr Urumov gave instructions and Mr Pinaev kept Mr Urumov informed of progress with regard to the execution of the buy trades with Adamant and (as appears below) the entry of the fake forward trade in Otkritie's systems.

252. Mr Pinaev's evidence was that he called (but did not speak to) Mr Urumov many times that day, because he was worried about the operation (and that he may have left voicemails exceeding 3 minutes in length). Ms Balk said that it was "possible" that Mr Pinaev rang her that day but accepted it was "unrealistic" that she would have spoken to him 8 (let alone 16) times on 9 March (which she then qualified by adding she did not "recall" speaking to him 8, let alone 16, times).

253. I do not accept Mr Urumov's evidence that he was unable to and did not speak on his phone while in hospital. In my view his evidence in this context is not credible for a number of reasons. First, the evidence in his statement that he did not use a telephone while in hospital is demonstrably false. Thus the records for his Otkritie mobile phone show four calls being made at various times during 9 March, including a call lasting longer than six minutes to Russia/Kazakhstan, a call at 8.11 am to his wife, and a call to Mr Popkov at 11.02 am. In my view, the overwhelming likelihood is that it must have been Mr Urumov himself who made such calls. Second, the number and length of calls between Mr Pinaev's phone and Mr Urumov's private mobile phone are, in my view, very strong evidence which undermines the suggestion that Mr Pinaev did not at any stage speak to Mr Urumov but that such calls were taken by Ms Balk. Third, it is in my view noteworthy that Mr Urumov has failed to disclose the records for his private mobile phone. Mr Urumov's evidence was that he had tried to obtain such records but that his mobile phone company had told him that they do not have such records. I find that surprising; but, in any event, there is no doubt that the records from Mr Pinaev's phone show the calls as stated above from his phone to Mr Urumov's private mobile phone.

254. As to the sequence of events on 9 March, the contemporaneous documents show the following. At 7.11 am, there was a call from Mr Pinaev's phone to Mr Urumov's phone. The call lasted 36 seconds. This, say the claimants, was the first of a number of calls on this day when Mr Pinaev and Mr Urumov were discussing the imminent Second Trade. Shortly thereafter, at 7.21 am, there was a call from Mr Gherzi's phone to Mr Pinaev's phone. At 8.05 am, Mr Pinaev forwarded to Mr Jemai Mr Urumov's email containing the terms of the deal that I have already referred to above. This, say the claimants, was Mr Pinaev preparing Mr Jemai to execute the Second Trade and to

input the fake forward leg. At the same time, 8.05 am, Mr Jemai sent an email to Mr Kounov, stating "*Can u please send me the email for sig*".

255. At 8.07 am, Mr Pinaev sent a further email to Mr Jemai copying his earlier email at 8.05 am stating "*Please ask Sergeev for authorisation as George is ill and I am also not feeling well at all*". This, say the claimants, was Mr Pinaev's attempt to distance Mr Urumov (and himself) from the deal by procuring authorisation from Mr Sergeev who had almost nothing to do with the Second Trade. Mr Jemai responded virtually immediately stating "*Understood*". A few minutes later, at 8.14 am, Mr Pinaev replied back to Mr Jemai stating: "*Pls contact Allesandro Gherzi for additional information on this bellow* [sic] *trade*". Mr Jemai then responds immediately: "*OK*".

256. Meanwhile, Mr Gherzi and Mr Gersamia were in contact via a Bloomberg chat. Mr Gherzi and Mr Gersamia join the "room" at 8.00 am and are in contact through Bloomberg throughout much of the day. It is too long to quote in full. For present purposes it is sufficient to refer to various parts of this chat in the course of 9 March as necessary. However, like other Bloomberg chats, certain of the language is somewhat cryptic and not always easy to understand. As I say, Mr Gersamia and Mr Gherzi join the chat at about 8 am when Mr Gherzi says to Mr Gersamia: "*… hi Amigo … listen I wanted to ask you something we are having a big trade, it is in priority, we don't have any traders …*"

257. At 8.20 am, Mr Jemai emailed Mr Gherzi stating: "*Morning, Kakdela?* [How are you?] *Please send me all the details concerning today's Argent trade*." At 8.29 am, there is a Bloomberg chat between Mr Jemai and Mr Kounov when Mr Kounov asks for Mr Pinaev's mobile telephone number. At 8.32/8.33 am, Mr Popkov emailed Mr Shamarin and Ms Kuzina with copy to Mr Predtechensky confirming his approval of the Second Trade in terms which I have already quoted above. At 8.38 am, Mr Jemai gives Mr Pinaev's mobile phone number to Mr Kounov.

258. At 8.46 am, and again at 8.53 am, the phone records show a call from Mr Pinaev's mobile number to Mr Urumov's private mobile number lasting just over 1 minute and 1 minute 29 seconds respectively. This, say the claimants, was Mr Pinaev reporting to Mr Urumov that Mr Popkov had authorised the Second Trade.

259. At 9.03 am, Mr Kikhaev invites Mr Jemai into a Bloomberg chat and emails to him the ISIN number of the Argentinean warrants. At 9.04 am, Mr Popkov forwards his 8.33 am email approving the deal to Mr Gherzi. At 9.07 am, Mr Velikov of Adamant emails Mr Jemai and Mr Pinaev (with copy to Mr Kounov) attaching and asking them to complete and return by email a general trading agreement with Adamant. At 9.09 am, Mr Jemai replies back to Mr Velikov with copies to Mr Pinaev and Mr Kounov stating: "*Thanks for the agreement. I shall revert shortly*".

260. Shortly thereafter, it would seem that Mr Pinaev called Mr Gherzi, followed by a further call by Mr Popkov to Mr Gherzi. There is a transcript of the latter conversation i.e. between Mr Popkov and Mr Gherzi. This shows the conversation starting apparently at 9.10 am. However, it was common ground that the likelihood is that this conversation probably started a little earlier and that this timing i.e. 9.10 am probably refers to the end rather than the beginning of the conversation. Be that as it may, Mr Popkov asks Mr Gherzi for the exact name of the Threadneedle entity for the forward trade for "*this story*" and states "*so I need the company, the final buyer of this happy*

thing …". Mr Popkov then asks Mr Gherzi how he would be making the trade and Mr Gherzi replied "*Err … Look … I just talked to Pinaev, he is going to book all this. Urumov met with the client and they discussed all these technical moments. As I understand, the counterparty … Formally, the counterparty is in Argentina, we don't have lines with them, and by the way, we also still don't have lines with Threadneedle. As I understand it, the incoming deal, we are going to do it via … I mean, we are going to switch it … And who is the counterparty, to be honest, I don't know, I will now call Ruslan* [Pinaev] *to see …*" Mr Popkov then said: "*I see. I don't care who is going to be at the first leg but for the second leg there should be a name that is consolidated, I mean, affiliated with Threadneedle, which consolidates with it …*". Mr Gherzi replied: "*… Ruslan* [Pinaev] *told me he apparently found a counterparty … Need to check with him again, I will give him a call …*" Mr Popkov then explained that it may be necessary for the trade to be booked as two separate transactions, one for the bank and one for Gavinic and asked if this could be done, whereupon Mr Gherzi replied that it should be possible to split the ticket. Mr Popkov said: "*… I mean the external story, when we are asked. So externally we are going to report that this is no f***ing buy-sell that we bought this paper from some idiots and then sold it at the spot…*". Mr Gherzi said: "*You see, these details were discussed between Urumov and Pinaev, when they met*" and "*… I will discuss this with Ruslan* [Pinaev] *now, because Ruslan met with them for dinner last week, they all met and discussed these questions … But I think, yes, the incoming will be through I don't know who – I am waiting to hear from them who is going to switch it… And for the outgoing, yes, I think it will be Threadneedle, most likely*". Mr Popkov then reiterated that he needed the Threadneedle counterparty name.

261. Following that call with Mr Popkov, there is then a Bloomberg chat at 9.10 am between Mr Gherzi and Mr Gersamia when Mr Gherzi says: "*… my management was calling me with regards to this big trade … they just f*** my brain in here …*". It was common ground that this was presumably a reference back to the telephone call that Mr Gherzi had just had with Mr Popkov.

262. At 9.13 am, Mr Shamarin emailed Mr Popkov and Ms Kuzina (copying in Mr Predtechensky) stating: "*The security is denominated in Peso – in Bloomberg and in open sources. We are buying for USD – and it looks like the exchange rate ARS/USD is 1.0000, and not the current market rate (ARS/USD = 0.2484). Can someone from sales (Pinaev, Jemai) officially comment on this situation to the following list of addressees. Thanks!*" At 9.20 am, Mr Popkov forwarded Mr Shamarin's above email to Mr Gherzi with the expression "*?*".

263. At 9.23 am, the phone records show a call by Mr Gherzi to Mr Pinaev lasting just over 3 minutes. At 9.25 am, Mr Gherzi emailed Mr Popkov, copying in Mr Urumov and Mr Pinaev, stating: "*Dmitry, to confirm the full name of the counterparty on the outgoing leg of the trade is Threadneedle Asset Management.*" It is noteworthy that neither Mr Urumov nor Mr Pinaev contradicted what Mr Gherzi had said. Although Mr Urumov was in hospital and Mr Pinaev may not have been in his office until a little later, we know from subsequent events on that day that they were both in email contact. In my view, the overwhelming inference is that they both intended Mr Popkov and others at Otkritie to believe that there was an outgoing leg (i.e. a forward sale) and that the counterparty was Threadneedle which was, of course, false, as they well knew.

264. At 9.26 am, Mr Shamarin emailed Svetlana Golisheva stating: "*We have to look carefully at this company – going to enter into transaction of 200 MLN (buy-sell)*". This certainly confirms that at least so far as Mr Shamarin was concerned, the proposed Second Trade involved not only a buy but also a sell. At 9.30 am, Mr Gherzi forwarded Mr Popkov's "*?*" email of 9.20 am to Mr Urumov and Mr Pinaev (copying in Mr Jemai) stating: "*Fyi, can you pls comment …*".

265. Meanwhile, Mr Gersamia and Mr Gherzi continued to be in contact in the Bloomberg chat. Again, the language is somewhat cryptic. The relevant passage starts at 9.12 am and continues until 9.30 am as follows:

> "*Gersamia: … well focus … OK … I am here just in case … otherwise push …*
>
> *Gherzi: … yes, mate, pushing like giving birth … and its triplets.*
>
> *Gersamia: … well mate … if a child is best gifr for a person … to triples … it is x3 … so push harder mama.*
>
> *Gherzi: … oh man I am so sick of it … everyone wants something from me, they f*** my brains all morning … it is not a triplets any more, it is a happy fat dozen …*"

The claimants say that this is all a reference to the Second Trade.

266. At 9.27 am, the phone records show a call from Mr Pinaev to Mr Urumov's private mobile phone lasting 1 minute 17 seconds. This, say the claimants, must have been a further discussion with regard to the execution of the Second Trade.

267. At 9.32 am, Mr Sharmarin emailed Ms Sharipova concerning the terms of the proposed deal, asking: "*Is a 20% discount per month enough for the security in this volume?*". At 9.51 am, Mr Popkov forwarded Mr Gherzi's email of 9.25 am concerning the identity of the Threadneedle counterparty to Ms Nechvolodova and Merrs Katorzhnov and Kuzmin.

268. At 9.52 am, Mr Jemai sent an email from his Otkritie account to his personal email address containing what appears to be a draft email and which reads as follows:

> "*Dear All, As discussed on numerous occasions regarding this trade, I would like to <u>ONCE AGAIN</u> explain and state that this security is traded in USD. For this security ARS prices are strictly for the local market, however on the international grounds all prices are in USD. I would like to remind you that we have already traded this security (bought at USD 13.02 and sold at USD 15.47) generating a significant profit as per attached tickets*."

269. This email was the subject of much attention in the course of Mr Jemai's evidence and in final submissions. In particular, Mr Berry submitted that it was very odd that Mr Jemai would be sending this draft response to Mr Shamarin's query to his own private email address and that the only plausible explanation for such conduct was so

that this draft could be shared and discussed with Mr Urumov and Mr Pinaev. That could be done, submitted Mr Berry, for example, if Mr Urumov and Mr Pinaev were given access to Mr Jemai's private email account. Moreover, Mr Berry emphasised that this particular email had been disclosed by the claimants and not by Mr Jemai, even though it was, on its face, an email that had obviously been received into his private gmail account. Thus, Mr Berry submitted that Mr Jemai had failed to comply with his disclosure obligations and that it was to be inferred, on the basis of this limited but telling sample, that Mr Jemai's private gmail account contained highly relevant documents that have been withheld from the court. In response, Mr Jemai denied that there had been any deliberate failure to comply with his disclosure obligations; that, for various reasons, any relevant emails from this gmail account must have been trashed or were otherwise no longer available. Further, Mr Jemai explained that it was his habit sometimes to send emails from his work account to his personal gmail account if, for example, he was going out of the office for lunch or any other reason and still wanted to have access to a particular email. In that context, he provided disclosure of other examples when this had happened. Even so, the fact that Mr Jemai did forward this draft email to himself seems to me to indicate, at the very least, a desire to be able to look at it outside of the office.

270. Shortly thereafter at 10.13 am, Mr Jemai sent a further email from his work email account to his personal gmail account. This is in substantially similar form to the earlier draft email at 9.52 am with the additional words at the end: "*hence you are kindly requested to stop reverting with the same questions. Thanks and best regards, Eugene.*" Again, the claimants say that the natural inference is that this draft was shared with Mr Urumov and Mr Pinaev, who discussed it with Jemai, and approved the contents of the email before it was sent in its final form by Mr Jemai to Shamarin.

271. At 10.24 am, the records show a telephone call by Mr Pinaev to Mr Urumov's private mobile phone lasting 1 minute 53 seconds. Almost immediately thereafter or even during the conversation, at 10.25 am, Mr Urumov emailed Mr Gherzi and Mr Pinaev (copying in Mr Jemai) stating "*We traded this already. Jusst show them trade tickets or give them client's direct number. Let them call direct.*" As sent, that email is the last in a chain, starting with Mr Popkov's original email at 8.33 am followed by Mr Shamarin's email at 9.14 am, Mr Popkov's "*?*" of 9.20 am and then Mr Gherzi's email of 9.30 am. This email was the focus of much attention in the course of evidence and submissions. In particular, as submitted by Mr Berry it is noteworthy that this email was sent by Mr Urumov at a time when, on his own evidence, he was in his hospital bed. At the very least, it seems to me that it shows that Mr Urumov's assertion in his statement that he had no involvement in the exchanges between Mr Popkov, Mr Jemai and the Risk/Compliance Department on 9 March 2011 and had no involvement in the purchase of the Argentine paper to be demonstrably false. In addition, Mr Berry submitted that by "*client*", Mr Urumov could only have been referring to Mr Gersamia who must, submitted Mr Berry, have been briefed about this. In particular, Mr Berry submitted that only if Mr Gersamia was party to the conspiracy and knew of and participated in the deception practised on Otkritie could Mr Urumov be confident that, if Mr Popkov or anyone else from Otkritie called Mr Gersamia "direct", Mr Gersamia would back up Mr Urumov's story that Threadneedle was, indeed, the counterparty in the first trade and was also the counterparty in the second trade. Thus, Mr Berry submitted that this email on its own is sufficient to convict Mr Gersamia of conspiracy.

272. Further, the fact that this email from Mr Urumov was sent almost immediately or even perhaps during what the claimants say must have been the call starting at 10.24 am between Mr Urumov and Mr Pinaev is too much of a coincidence. Thus, the claimants say that the proper inference is that during that call at 10.24 am, Mr Urumov and Mr Pinaev must have been discussing the terms of the email which Mr Urumov was intending to send – and ultimately did send at 10.25am. I agree.

273. At 10.26 am, Mr Jemai then emailed Mr Shamarin, Ms Kuzina and Mr Popkov (copying in Mr Gherzi, Mr Urumov, Mr Pinaev and Mr Sergeev) as follows:

> "*Dear All, As discussed on numerous occasions regarding this trade, I would like to* <u>*ONCE AGAIN*</u> *explain and state that this security is traded in USD. For this security ARS prices are strictly for the local market, however on the international grounds all prices are in USD. I would like to remind you that we have already traded this security (bought at USD 13.02 and sold at USD 15.47) generating a significant profit. Thanks and best regards, Eugene*."

274. This was, of course similar but not identical to the two earlier drafts sent by Mr Jemai from his work email address to his personal email address at 9.52 am and 10.13am referred to above. In particular, this email amended the previous last draft by deleting the words "*…as per attached tickets*" at the end of the first paragraph (the tickets would have shown the 1:1 exchange rate) and deleting the sentence "*Hence you are kindly requested to stop reverting with the same questions*". The claimants say that these amendments were evidently made in light of Mr Jemai's discussions with Mr Urumov and Mr Pinaev; and that Mr Jemai intended (as did Mr Urumov and Mr Pinaev, who approved the text of the email beforehand, and did not correct it when it was sent) Mr Shamarin and others at Otkritie to believe that (i) it was right to apply a 1:1 exchange rate to the number for the price quoted in ARS; (ii) the market value of the paper was therefore US$ 13-15 per cent; (iii) the First Trade proved this value. Further, it is the claimants' case that Mr Urumov, Mr Pinaev and Mr Jemai all knew these representations were false.

275. Shortly thereafter, Mr Gersamia and Mr Gherzi continue their Bloomberg chat between 10.39 and 10.56 am as follows:

> "*Gersamia: Signore … send me text when u give birth … K?*
>
> *Gherzi: … aaalmost there … just spoke all OK. It seems all polished out … so closing it tod …*
>
> *Gersamia: … anyway … let me know pls … as wanna take a picture … of those newborn: - ()*
>
> *Gherzi: … it's a very ugly one … the proverbial donut without a hole …*"

276. Once again, the language in this part of this Bloomberg chat is cryptic and not easy to follow but, as submitted by Mr Berry, it seems tolerably plain that the focus of this conversation is again the proposed Second Trade.

277. At 10.59 am, the records show a further telephone call from Mr Pinaev to Mr Urumov's private mobile phone number lasting some 2 minutes and 22 seconds.

278. Virtually at the same time, i.e. at 10.59 am, there is a transcript of a telephone call from which it appears that Mr Gherzi calls Mr Jemai and queries why Mr Jemai is asking for "*trade details*". Mr Jemai goes on to suggest that others in the Bank call the client direct (which Mr Gherzi rejects) and then asks: "*About the size, about the prices, I need it all, if it has to be broken down in some way, who should it be sent to, as much information as possible about what I have to do, I don't know.*" Mr Gherzi then speaks to somebody (in all probability Mr Pinaev) and then passes the phone to Mr Pinaev who speaks to Mr Jemai. Mr Pinaev then asks: "*Why are you calling him?*" Mr Jemai replies: "*Well just to find out all the details from him.*" Mr Pinaev then responds: "*Ahh OK. I'll give you everything*" and Mr Jemai said: "*OK let him forward it to me*"; and Mr Pinaev finishes the conversation with "*OK*".

279. Also at 10.59 am, Mr Jemai emailed Mr Velikov and Mr Pinaev (copy to Mr Kounov) an amended copy of the trading agreement requested by Mr Velikov in his earlier email of 9.07 am with the words: "*Awaiting your final and signed version*".

280. At 11.02 am, Mr Shamarin emailed Mr Gherzi (copy to Mr Popkov) asking which of a number of Threadneedle entities was the counterparty. Shortly thereafter, Mr Gherzi and Mr Gersamia are again in communication on their Bloomberg chat. At 11.08 am, Mr Gherzi identifies a number of possible Threadneedle companies and, in response, Mr Gersamia identifies "*Threadneedle Asset Management Ltd*" as the "one".

281. There is then a series of communications concerning the provision of Threadneedle accounts.

282. At 11.35 am, Mr Pinaev emailed Mr Popkov stating:

> "*As far as I understand we will be buying from our client as follows: OSL buys 1650mm at todays market price – 3 points therefore around 12.9375 … GV buys from OSL 800mm at 12.9375 … Bank buys from OSL 850 mm at 12.9375 … End of Month GV sells to OSL 800MM at 15.9375 … Bank sells to OSL 850MM at 12.9915 (5% monthly) … OSL sells to client 1650MM at today's price of 15.9375*."

283. At 11.57 am, and shortly thereafter at 12.00 pm, the records show two further telephone calls from Mr Pinaev to Mr Urumov's private mobile phone number lasting respectively 1 minute 21 seconds and 3 minutes 28 seconds. Again, the claimants say that this must have been a discussion between Mr Pinaev and Mr Urumov probably with regard to the email that Mr Pinaev had sent a little earlier at 11.35 am and to discuss the terms of the Second Trade. I agree.

284. At 12.29 pm, Mr Popkov sent an email to Mr Pinaev setting out exactly how the trade should be booked in Otkritie's books "*from the legal standpoint*" including the forward sale(s) to "*TNAM UK*". Shortly thereafter, there is a transcript of a telephone call by Mr Popkov to Mr Pinaev dealing with the manner in which the deal would be booked. In summary, Mr Popkov told Mr Pinaev how the deal needed to be booked in Otkritie's account. Mr Pinaev told Mr Popkov that there would have to be a

discussion with the Middle Office regarding how the trade would be booked internally. Mr Popkov responded that he would speak with the Middle Office and forward details to Ms Nechvolodova and Mr Pinaev said that he would "… *forward it to Jemai, because from our side, Jemai will be doing all the calculations, under my control* …". Mr Pinaev then asked: "*OK Dima, tell me one thing, can I make a deal with the client … by?*" Mr Popkov responded that he could do both the buy and sell trades; and Mr Pinaev confirmed that he would then do the tickets for these. In particular, Mr Pinaev said: "… *and for sell of course, straight away for sell*". Mr Popkov responds: "*So one deal for buy and two deals for sell … 800, 850*". Mr Pinaev then confirms: "*Yes, yes, yes ok.*" In my view, this is a very important exchange for two main reasons. First, it confirms Mr Popkov's evidence that the basis on which he authorised the Second Trade was that the buy and sell legs were to be executed simultaneously – in effect as part of a single deal. Second, given that there was no sell leg at all, what Mr Pinaev told Mr Popkov (i.e. "*yes, yes, yes, ok*") was untrue as Mr Pinaev well knew.

285. There then follow certain internal email exchanges. At 12.44 pm, the records show a telephone call from Mr Pinaev to Mr Urumov's private mobile phone lasting 58 seconds.

286. At 1.05 pm, there is a Bloomberg chat between Mr Jemai and Mr Pinaev regarding the tickets. In particular, Mr Jemai asked Mr Pinaev in the Bloomberg chat to "*check pls*" which was, it would seem, a reference to a ticket that Mr Jemai was completing in respect of the purchase from Adamant. At 1.07 pm, Mr Jemai completed a ticket in respect of the purchase from Adamant which he sent to Mr Kounov. Almost immediately, that ticket (which showed the price in USD) was rejected by Adamant. At 1.08 pm, Mr Jemai informed Mr Pinaev in the course of a Bloomberg chat that the ticket had been "rejected"; and Mr Pinaev then told Mr Jemai that this was because the other side had made a mistake; Mr Pinaev then told Mr Jemai to send it again.

287. At 12.44 pm, Mr Pinaev forwarded the earlier email from Mr Popkov at 12.29 pm to Mr Jemai.

288. Between 1.11 pm and 1.39 pm, Mr Jemai then sends a series of tickets to Mr Kounov in respect of the purchase of the warrants recording Mr Jemai as the named trader.

289. At about 1.15 pm, there is a Bloomberg chat between Mr Pinaev and Mr Kounov in the course of which Mr Pinaev made a firm offer to Mr Kounov for 1650M of Argentinean Warrants at 12.9375, confirming (a little later) that the price was in USD. Mr Kounov says that he needs a "*firm bid*"; Mr Pinaev responds to this by saying: "*Firm … done*". The chat continues as follows:

> "*Kounov: please confirm your price is in USD.*
>
> *Pinaev: price is USD.*
>
> *Kounov: OK thanks, working on it.*
>
> *Pinaev: PLS confirm with Eugene Jemai as he is the trader for this.*

Kounov: OK, will do.

Kounov: what exchange rate we should apply.

Pinaev: PLS ask Jemai.

Pinaev: But as far as I know 1:1."

290. This exchange is, to say the least, extremely curious. In particular, it seems to me that Mr Pinaev's statement to Mr Kounov that he should confirm with Mr Jemai that the price is in US dollars because he is the "trader" is incomprehensible. On any view, it is plain that Mr Pinaev knew far more than Mr Jemai; and, in my view, the only sensible explanation for this is that Mr Pinaev was deliberately seeking to distance himself from the proposed transaction. Of perhaps even greater significance is the later comment by Mr Pinaev in this exchange, when he is asked by Mr Kounov what exchange rate should be applied: "*As far as I know 1:1*", which Mr Pinaev well knew was untrue, as had been confirmed only the day before by Norvik when they had specifically told Mr Pinaev that the price in US$ was "*3.65*" and in ARS "*15*".

291. That Bloomberg chat between Mr Pinaev and Mr Urumov ended at 1.30 pm. This was then followed shortly thereafter at 1.38 pm by a call from Mr Pinaev to Mr Urumov's phone which lasted 1 minute 36 seconds. The claimants say that the inference is that this must have been a call by Mr Pinaev to Mr Urumov informing him of the purchase he had just done from Adamant (Mr Kounov). I agree.

292. Meanwhile, Mr Gherzi and Mr Gersamia continued to communicate from time to time through a Bloomberg chat. In particular, at 1.31 pm, Mr Gherzi told Mr Gersamia that he had spent 15 minutes with the Head of Risk.

293. Also, at about this time, work is done with regard to "tickets". In particular, at 1.43 pm, Mr Pinaev sent himself a ticket for the purchase of 100M warrants showing a price of 12.9375 and USD/ARS exchange rate of 1:1, and then confirmed this ticket. Shortly thereafter at 1.46 pm, Mr Jemai sent another ticket to Mr Kounov for purchase of 100M warrants, this time in the same format as the one in which Mr Pinaev sent to himself at 1.43 pm, showing USD/ARS exchange rate of 1:1. At 1.47 pm, Mr Pinaev sent Mr Kounov a screen shot of a ticket showing USD/ARS exchange rate of 1:1. At 1.48 pm, Mr Jemai then sent another ticket to Mr Kounov for the purchase of 100M warrants, again in the same format as the one in which Mr Pinaev sent to himself above showing USD/ARS exchange rate of 1:1. At 1.55 pm, Mr Jemai appears to cancel the tickets he had sent previously to Mr Kounov and shortly thereafter, at 1.59 pm, Mr Kounov apparently rejects two of Mr Jemai's earlier tickets. At 2.06 pm, there is a Bloomberg chat between Mr Jemai and Mr Kounov when Mr Jemai asks Mr Kounov if he will send all the tickets; Mr Kounov confirms that he will do so.

294. Also at 2.06 pm, the records show a further telephone call by Mr Pinaev to Mr Urumov's private mobile phone lasting 1 minute 38 seconds. The records show a further call, again by Mr Pinaev to Mr Urumov's private mobile telephone, at 2.41 pm lasting 2 minutes. Again, the claimants say that these calls must have been by Mr Pinaev to Mr Urumov updating him on the progress of the Second Trade. I agree.

295. Meanwhile, there are documents which show Mr Jemai confirming various tickets. There are also further Bloomberg chats, in particular at 2.15 pm between Mr Pinaev and Mr Kounov (when Mr Kounov initially tells Mr Pinaev that he is unable to fulfil the order) and at 2.23 pm between Mr Jemai and Mr Kounov, when Mr Kounov tells Mr Jemai that the "*order is done*", and at 2.31 pm when Mr Jemai confirms to Mr Kounov that he had fixed the currency denomination issue.

296. Meanwhile, Mr Gherzi continued to be in communication with Mr Gersamia via the Bloomberg chat. In particular, there is a discussion at around 1.30 pm concerning the provision of accounts, which Mr Gherzi tells Mr Gersamia: "*ACCT opening etc.*" Certain parts of that Bloomberg chat are again somewhat cryptic. In particular, at 2.09 pm, Mr Gherzi says: "*… Hmm can you call me once again if it is not a problem for you …*". The claimants say that the inference is that Mr Gherzi wanted to speak to Mr Gersamia about matters which he was not prepared to set out in the chat. Shortly thereafter, at 2.18 pm, Mr Gersamia states: "*I am here just in case …*".

297. Shortly thereafter the exchange between Mr Gersamia and Mr Gherzi continues as follows:

> "*Gherzi: … yes mate all good spoke to risk and deputy ceo they approved everything … just spoke to them now … so all is OK …*
>
> *Gersamia: … great*
>
> *Gherzi: … all sorted so God willing no more pains on this front …*
>
> *Gersamia: … I am already getting dodgy looks.*
>
> *Gherzi: … yap it is ridiculous for publicly listed funds to get all this back and forth going … bah*
>
> *Gersamia: … that's it … go ahead … I am here … waiting …*
>
> *Gherzi: … everything is OK. All approvals are given and they are closing it as we speak I am being told …*
>
> *Gersamia: … there … I want OT say something funny … I'll tell u later:*"

298. The chat then continues in terms which are not easy to understand. At 2.49 pm, Mr Gherzi says that he needs a drink. Mr Gersamia responds saying: "*HUGE drink*". There are then references to a possible party that night. The chat then continues at about 3.30 pm as follows:

> "*Gersamia: … OK … am so tired … might stroll out … what is going out there … need me?*
>
> *Gherzi: … Everything is OK … I am exhausted and not looking forward to this evening …*

Gersamia: … so done … ?

Gherzi: … booking it now internally so assume all closed …

Gersamia: … OK … I'll go. I bought myself a Big Mac … with fries.

Gherzi: was thinking along the same lines but then not sure I deserve a supersize deal though … might choke on it …

Gersamia: … with clear conscience …"

The conversation then continues.

299. Meanwhile, the documents show Mr Jemai preparing and indeed completing various tickets in relation to the deal. There are also various Bloomberg chats between in particular Mr Jemai and Mr Kounov where Mr Kounov is in effect instructing Mr Jemai how to use the Bloomberg system to send tickets to him. At 3.09 pm, there is also a Bloomberg chat where Mr Pinaev told Mr Jemai to work "*faster*", stating "*you have been doing this for 3 hours already*". This would obviously seem to be a reference to the completion of the tickets.

300. At 3.11 pm, there is a transcript of a phone call. This shows Mr Pinaev phoned Mr Jemai. The transcript indicates that Mr Pinaev is somewhat angry; and he tells Mr Jemai to get on with completing the tickets. Mr Jemai told Mr Pinaev that "*there are people walking round here constantly*". Mr Pinaev responds by telling Mr Jemai to "*send them to hell, tell them that you are busy.*" This exchange was relied on in particular by the claimants. Specifically, the claimants submitted that the fact that Mr Jemai used the fact that people were walking around constantly as, in effect, an excuse for the time he was taking in completing the tickets showed that he knew that what he was doing was wrong and that he needed to maintain secrecy.

301. At 3.17 pm, Mr Jemai told Mr Pinaev in the course of a Bloomberg chat that "*OK done*". This would seem to have been a reference to the completion of the tickets on the buy side. Shortly thereafter, at 3.18 pm, Mr Pinaev then told Mr Jemai again in the Bloomberg chat to "*do the sell ticket*".

302. Mr Pinaev and Mr Jemai then arranged the documentation requested by Adamant and, in doing so, they falsely implicated Mr Sergeev who they knew was on holiday in the south of France at the time. In particular, there is no doubt that Mr Jemai forged or was knowingly a party to the forgery of Mr Sergeev's signature on the Agreement for General Terms of Concluding the Securities Transactions between Adamant and Otkritie Bank, which was likely copied from Mr Sergeev's general power of attorney from Otkritie Bank. This appears from a transcript of a phone call between Mr Jemai and Mr Pinaev on 10 March 2011 when Mr Jemai told Mr Pinaev that he tried to arrange for Mr Sergeev to sign a copy of the agreement by sending it to the hotel where he was staying, but Mr Sergeev proposed that it should be checked by lawyers first, which prompted Mr Jemai simply to forge his signature. As Mr Jemai told Mr Pinaev: "*He started yapping about "oh no, the lawyers have to check it". F**k, started saying some bullshit. So we figured it out in some other way. Well, it is done.*" At the end of the call, Mr Pinaev asked Mr Jemai to call him on his mobile which he

(Mr Jemai) agreed to do. In my judgment, the very strong inference is that Mr Pinaev wanted to talk openly to Mr Jemai about the fraud and they knew that their mobile phone conversation would not be recorded.

The fake forward trade

303. The documents show that Mr Jemai entered "sell" tickets into the TOMS system apparently confirming the sale of the warrants to Threadneedle – although, of course, there was never any such sale and such tickets were false. The evidence of Mr Jemai is that he did this on the instructions of Mr Pinaev – although this was denied by Mr Pinaev. In particular, it was Mr Jemai's evidence that the details of the fake forward trade had been supplied to him by Mr Pinaev who forwarded him an email from Mr Popkov. However that email on its own does not give sufficient information to produce the tickets (e.g. it does not contain the price or the precise name of the counterparty). It is fair to say that there was further a email from Mr Popkov to Mr Pinaev also forwarded to Mr Jemai on 9 March which provided some further information i.e. it referred to a sale by OSL to "TNAM UK" at a price of 15.9375 (currency unspecified) but even this was insufficient to produce the tickets. In my judgment, the overwhelming inference is that Mr Jemai already knew the details of the fake forward trade which had been agreed with the other conspirators; input the fake tickets accordingly; and when he did so, intended Otkritie to be misled into believing that there was a forward trade and to rely upon it when it settled the buy side of the Second Trade. It is noteworthy that Mr Jemai told Mr Shamarin that he could not recall the name of the counterparty seemingly confusing "Threadneedle" with "Threadstone" – although, in my judgment, this seeming confusion was pretence on his part just as he feigned ignorance when he told the Swiss Prosecutor that he only vaguely knew the name of Threadneedle from it being mentioned by colleagues. Mr Pinaev admitted in evidence that both he and Mr Jemai realised they were inputting a fake ticket (because they knew there was no forward sale in existence) but his evidence was that they were instructed to do this by Mr Popkov. In my judgment, that assertion is a deliberate lie; the "sell" tickets were entered into the system by Mr Jemai with the full knowledge and active agreement of Mr Pinaev and Mr Urumov as an integral part of the fraudulent conspiracy.

304. In so doing, it seems that Mr Pinaev and Mr Jemai misunderstood Mr Urumov's instructions (or his intention) because they had used the wrong price viz US$ 15.9375 per cent. That produced a total forward price of US$ 262,968,750, and therefore a high rate of return, well in excess of the figure that would produce 14% p.a. over six months. Shortly thereafter, it seems that Mr Urumov realised the error and, on or before 14 March, instructed Mr Pinaev and Mr Jemai to reduce the price of the fake forward trade, so that it would generate 14% p.a. over six months i.e. the rate of return that (as I have found) Mr Urumov repeatedly told Mr Popkov had been agreed with Threadneedle. Accordingly, Mr Pinaev instructed Mr Jemai to replace the tickets for US$ 15.9375 with tickets for US$ 13.8425. The new price was calculated as follows viz Buy: 14 March 2011 1.65bn x 0.129375 = US$ 213,468,750. Sell: 10 September 2011 1.65bn x 0.138425 = US$ 228,401,250. This produced a total projected revenue (i.e. profit) for Otkritie over 6 months of US$ 14,932,500 equivalent to a net return over that period of 14,932,500 ÷ 211,368,750 x 100 = 7% exactly, subject only to rounding error. On an annual basis, that is equivalent to 7 x 2 = 14% p.a. This is important further independent evidence consistent with and confirming Mr Popkov's

evidence that that is the annual rate of return that Mr Urumov had orally told him (i.e. Mr Popkov) that Otkritie would receive on the deal. It follows that the repeated suggestions put by Mr Peto in cross-examination to the claimants' witnesses (including Mr Popkov and Mr Lokhov) that the rate of return was much higher than this figure were made on a false basis.

305. The error was duly corrected by Mr Jemai on 14 March, on Mr Urumov's instructions, communicated through Mr Pinaev. In my judgment, the overwhelming probability is that the purpose of inputting the new false tickets was to ensure that OSL settled the inward purchase of the warrants from Adamant by paying out the sum of approximately US$ 213m that was due on settlement (which took place in stages, commencing on 14 March).

306. Although this was hotly disputed by Mr Urumov, I accept Mr Popkov's evidence that in conversations on 9 and 14 March (probably during those identified in the phone records at 11.02 am on 9 March (lasting 3m 33s) and at 8 am on 14 March (lasting 11m 8s)), Mr Urumov told him that a forward trade had been executed with Threadneedle; that there was a ticket in TOMS confirming the trades but that Mr Pinaev had made a mistake about the price; that the ticket in the system was therefore wrong; and that it would be changed in order to show the correct price in US$ generating 14% p.a. (Of course, if there had been a binding forward trade in existence, the price could not be amended retrospectively.) Importantly, Mr Urumov admitted in evidence that he saw the fake forward ticket. Realising this is fatal to his denials, he said that it was Mr Gherzi who had entered a false trade, and that he (Mr Urumov) complained about this to Mr Gherzi and Mr Popkov. That story was never put to either in cross-examination. In my judgment, it was a late invention by Mr Urumov which is not credible.

307. It follows from all the above that Mr Urumov's evidence that he never represented to Otkritie that there was any agreement in place with Threadneedle and that he did not know on 9 March that Mr Popkov had informed the risk department that a deal was in place with Threadneedle in the form outlined is, in my judgment, false as Mr Urumov well knew.

308. Thus, it is my conclusion that Mr Urumov, Mr Pinaev and Mr Jemai intended to and did mislead Mr Popkov, Mr Lokhov, the risk department and Otkritie's back office into believing that there was a credible forward sale <u>before</u> settlement on 14 March, and thereby induced OSL to pay US$ 213,468,750.

The Initial Flows of Funds from OSL

309. As appears from Figure 6, on receipt of various tranches of monies between 14 and 18 March totalling US$ 213,468,750 from OSL (the "OSL Monies"), Adamant paid Snoras/Gemini US$ 212,973,748 of the OSL Monies on the same dates (the "Adamant Monies"). Between 16 and 18 March 2011, approximately US$ 150m of the Adamant Monies (the "fraud proceeds") were then transferred from Gemini's account at Snoras to its account at LKB; and approximately US$ 120m of the fraud proceeds were then almost immediately transferred from Gemini's account at LKB to the Arcutes Bordier Account. (Arcutes was, as I have said, a Panamanian company acquired by and for Messrs Urumov, Pinaev and Kondratyuk shortly before the Argentinean Warrants Fraud, (admittedly) beneficially owned and controlled by them,

and dissolved at the behest of Mr Urumov and Pinaev in May 2011. For reasons set out below, I have no doubt that it was their vehicle for receiving and distributing the fraud proceeds.)

310. The evidence of Mr Urumov and Mr Pinaev is that this sum of US$ 120m was a genuine investment loan, a suggestion which is seemingly supported by what certainly appears, on its face, to be a Loan Agreement between Gemini/Arcutes, a copy of which, signed by Mr Urumov, was located in the Dunant safe deposit box, along with certain other agreements from which the terms were evidently copied, although Mr Urumov denied any involvement in preparing or signing it (the "Gemini-Arcutes Loan Agreement"). In my judgment, the Gemini-Arcutes Loan Agreement is a fake or a sham or both. The overwhelming inference is that it was produced to satisfy LKB's money laundering requirements. There is no evidence that Bordier was ever provided with a copy of the Gemini-Arcutes Loan Agreement. Messrs Urumov, Pinaev and Kondratyuk lied to Bordier about the origin of the US$ 120m paid to Arcutes, by pretending that it represented the proceeds of sale of shares in a Russian company called Ural Pharma. Mr Urumov and Pinaev produced or procured the fake Ural Pharma SPA (with Mr Kondratyuk's forged signature thereon), and admit signing it knowing it to be false.

311. As to the remaining US$ 30m of the Fraud Proceeds, as appears from Figure 5, these monies were transferred to various corporate entities connected to Snoras/Gemini/Churin, some of which (e.g. Tarmilona Ltd ("Tarmilona") and Diva Consulting Ltd ("Diva")) had significant prior financial dealings with the Urumovs and Pinaevs. There was much evidence concerning these monies but, for present purposes, it is sufficient to state my conclusion viz they represented Snoras/ Gemini/Churin's agreed 20% share of the fraud proceeds.

The Transfers from Arcutes for the Defendants

312. As appears from Figures 6, 7 and 9, on 21, 23 and 30 March 2011, US$ 109.5m of the fraud proceeds were transferred in equal shares of approximately US$ 36.5m from the Arcutes Bordier Account to the Bordier accounts of each of Sun Rose, Pleator and Firmly Oceans. The underlying bank records show that these transfers were effected using convoluted and costly physical cash transfers. In particular, the records show that Bordier purchased physical bank notes from UBS for the purpose of the first two encashments (approximately US$ 20m on 21 March and US$ 16.365m on 23 March). In a bizarre charade (which Bordier has acknowledged was the largest cash transaction it had ever conducted), the cash stayed inside an armoured car outside Bordier's premises for a few hours, while the bank recycled the US$ 20m and US$ 16.365m three times, with each lot being 'purchased' on Arcutes' behalf (for which purpose Bordier debited its account), before being 'sold' back to the bank on behalf of Messrs Urumov, Pinaev and Kondratyuk's companies (Sun Rose, Pleator and Firmly Oceans respectively). The proceeds – less the bank's US$ 10,000 commission for each large sale/purchase – were then credited on the same day to their bank accounts as "*Sale of Bank Notes*". Taken alone, the Bordier bank statements of Arcutes, Sun Rose, Pleator and Firmly Oceans therefore do not reveal the identity of the recipient or source of these huge payments – although these links are recorded in internal Bordier documents. In my judgment, the overwhelming inference is that this mechanism to effect these transfers was chosen deliberately to seek to disguise the

origin and destination of the monies; there is, in my view, no other plausible explanation.

313. In addition, there were produced in court numerous purported contractual documents (in various versions) including what would appear to be Investment Management Agreements ("IMAs"), many incorporating facsimiles of Mr Churin's signature which, on their face, seemingly serve to confirm the supposed genuineness of the transfers from Gemini to Arcutes and then from Arcutes to Sun Rose and Pleator. These included what have been referred to as the Sun Rose IMA, the Gemini Cancellation Document, the Pleator IMA, the Pleator Delegation Agreement and the Pleator Supplementary Agreement. There was much evidence in relation to these documents. Mr Pinaev claims that he proposed and then insisted upon the use of separate agreements to govern his, Mr Urumov's and Mr Kondratyuk's individual relationships with Gemini. Mr Urumov, on the other hand, suggests that this was Mr Kondratyuk's proposal from the outset. In any event, both say that Mr Kondratyuk came to a dinner at a restaurant in London called Ikeda in late March 2011 with two IMAs (each in duplicate), which were already signed by Mr Churin on behalf of Gemini; and that they each signed the relevant versions, keeping one copy for themselves and giving the other to Mr Kondratyuk.

314. In my judgment, these IMAs and related documents are fakes or shams or both probably produced at some later date and designed to provide a false documentary cover story for the transfers. I reach this conclusion for the reasons advanced by Mr Berry which were in summary as follows:

i) The nature, size and timing of the payments from OSL to Gemini/Snoras and the subsequent payments from Gemini to Arcutes and then out of Arcutes are too much of a coincidence to be unconnected. At the very least, such coincidence raises a very strong suspicion that the latter were not part of any genuine commercial transaction but constituted the distribution of the proceeds of fraud.

ii) There is conclusive evidence that the purported 'signatures' of Mr Churin (for Gemini) are identical facsimiles of each other and very probably also of *inter alia* the 'signature' on the Gemini-Arcutes Loan Agreement.

iii) The IMAs and other documents contain certain features which are, to say the least, very odd if they were indeed genuine commercial transactions. In particular, the IMAs are inconsistent with the Gemini-Arcutes Loan Agreement, as a straightforward loan at interest; do not even refer to the amount of money actually entrusted by Gemini to Sun Rose or Pleator; give Sun Rose and Pleator unlimited powers to bind Gemini (cl. 2) and to retain the services of others at Gemini's cost (cl. 5); provide for payment to Sun Rose and Pleator of an up-front "*flat management fee*" of US$ 2m payable "*immediately*" (cl. 6; Appendix, cl. (b)) and an early cancellation fee "*in USD equivalent to GBP 200,000*" (later paid to Mr Urumov even though he was the cancelling party) (cl. 9; Appendix, cl.(d)).

iv) By clauses (1)(i) to (iv) and 3, each of the IMAs required the 'Investment Manager' to provide an evaluation of economic conditions; an evaluation of the prospects of each relevant investment market; a recommendation of the

investment portfolio and strategy; an analysis and presentation of recommended projects; and periodic reports regarding the investment activities. These requirements are hardly surprising in any genuine transaction yet it is noteworthy that none of these was ever requested by Gemini or provided by Messrs Urumov or Pinaev.

315. In my judgment, the overwhelming inference is that these IMAs were prepared by Messrs Urumov and Pinaev after the balloon went up in autumn 2011. As submitted by Mr Berry, this would explain why (i) the early cancellation fee was so oddly described as a US dollar sum "*equivalent to*" a pound sterling amount: the equivalent of £300,000 had already been transferred to Ms Balk's US$ account at Jyske Bank in Gibraltar in three equal instalments on 9, 11 and 18 August 2011, the first from Denning and the latter two from Dunant, and so the Urumovs needed to justify the latter transfers as a legitimate use of the 'investment' monies held by Dunant; (ii) there is no independent evidence of their existence before the commencement of this litigation, and no suggestion, whether in the documentary record or from the defendants themselves, that the IMAs were ever mentioned or provided to Bordier (or indeed to any other third party) to justify the large cash receipts by Sun Rose and Pleator, or the subsequent dissipation of the same; and (iii) there is no equivalent IMA for Mr Kondratyuk.

316. Further, as appears below, I am satisfied that Ms Balk provided direct assistance in the manufacture of those documents relating to Sun Rose and Mr Urumov's share of the Fraud Proceeds knowing them to be fakes or shams as part of a deliberate money-laundering exercise.

317. Most of the remaining US$ 10.5m of fraud proceeds in the Arcutes account was transferred (i) as to US$ 400,000, to Vantax on 21 March 2011; and (ii) as to US$ 10.1m, to Belux on 30 March 2011 which, it is said, was a "loan" pursuant to a loan agreement dated 1 April 2011 signed by Mr Urumov for Arcutes, by which Arcutes purportedly 'lent' US$ 10.1m for 2 years at 9% p.a. to Belux, Mr Gersamia's brother-in-law's Hong Kong company (the "Arcutes-Belux Loan Agreement"). Those payments are considered further below, in the context of the claimants' allegations that these constituted the receipt and laundering of the fraud proceeds by the Jemais and the Gersamias. In any event, the result was that the Arcutes account balance went from US$ 120m on 18 March to just US$ 2,046 by 30 March 2011.

318. As submitted by Mr Berry, it is, in my view, telling that Arcutes' shareholders resolved to dissolve the company very shortly thereafter (i.e. on 10 May 2011) on the basis that it had by that stage "*fulfilled the main purpose of its formation*". This must have been done at the instigation of the beneficial owners Messrs Urumov, Pinaev and Kondratyuk; and it is of course, consistent with what in my view was Arcutes' true origins and purpose, namely to act as an opaque conduit for the transfer of the fraudsters' shares of the proceeds. Further, as submitted by Mr Berry, it is also inconsistent with the case advanced on behalf of Messrs Urumov and Pinaev and the alleged genuineness of the various contracts upon which they now rely to explain their subsequent 'investments', including (i) the Gemini-Arcutes Loan Agreement itself (which purported to have a term of 3 years); (ii) the Arcutes-Belux Loan Agreement (which purported to have a term of 2 years); and another agreement referred to as the "Delegation Agreement", with its Supplementary Agreement,

supposedly dated 10 October 2011 between Gemini, the already dissolved Arcutes, and Pleator.

319. I deal later in this Judgment with what happened to all these monies. In my judgment, that analysis confirms and indeed puts beyond any reasonable doubt whatsoever that (together with Mr Kondratyuk) Mr Urumov and Mr Pinaev were at the heart of the fraud inflicted on Otkritie and received a huge share of the fraud proceeds. Further, it is my conclusion that the evidence of both Mr Urumov and Mr Pinaev that they had no or only little involvement with the Second Trade is a deliberate lie.

Monthly rollovers

320. As to the fake forward trade itself, the deal as authorised by Mr Popkov envisaged "monthly rollovers". These were done by Mr Jemai in April-June and (on Mr Jemai's instructions) by Mr Mufti in August. On 31 May, Mr Jemai sent an email to various people, including Mr Popkov, in which he said that the forward trade could settle any moment if the client calls, therefore it was incorrect to calculate the funding cost until September. As submitted by Mr Berry, it is my conclusion that he thereby intended to deceive Mr Popkov into believing that there was a rolling monthly sale to Threadneedle. Mr Jemai's evidence to the Swiss Prosecutor to the effect that he was not involved with the forward trade was knowingly false, as was his evidence to this Court that he did not know the reason for the rollovers.

Other events

321. For the sake of completeness, I propose to refer briefly to certain of the evidence and where appropriate make further findings with regard to a number of other events after the Second Trade which are (or are said to be) part of the story

322. On 15 March, there was a telephone call between Mr Urumov and Mr Popkov, during which Mr Urumov claimed to have made a P&L of about US$ 14.5m on the Second Trade, plus US$ 3m on the First Trade, making a total of about US$ 17.5m. That is only consistent with Mr Urumov intending Mr Popkov to believe that a forward trade had been done with Threadneedle at US$ 13.8425 per cent so that OSL would pay out to Adamant on the buy leg, in the belief that (i) there was a back-to-back agreement with Threadneedle on the sell leg, and (ii) the market price was US$ 15 per cent or so.

323. On 18 March, Mr Urumov organised a meeting at Threadneedle's London offices with Mr Popkov, Mr Gersamia and Mr Gherzi. This was the first and only time Mr Popkov met Mr Gersamia. The meeting was conducted in English. This is very odd because Mr Urumov certainly knew that Mr Popkov spoke English very poorly and both Mr Urumov and Mr Gersamia spoke Russian well. As submitted by Mr Berry, the explanation would seem to be that Mr Urumov and Mr Gersamia must have agreed in advance to conduct the meeting in English because they did not want to have a detailed conversation about the First and Second Trades. During the meeting, Mr Popkov asked Mr Gersamia whether "everything was okay" with the Second Trade, and Mr Gersamia confirmed that it was, thereby intending his answer (falsely) to assure Mr Popkov that all was well with the forward trade.

324. On 22 March, Mr Urumov sent Mr Pinaev a list of trades allegedly executed by Otkritie, including the buy and sell legs of the First and Second Trades, which he

obtained from Mr Jemai earlier that day. This document was plainly misleading in that it identified a forward trade with Threadneedle (ticket numbers 2009 and 2010) which was untrue. It is also plain that the intention was that the list would be passed on to Mr Popkov or other Otkritie managers with the intention to deceive Mr Popkov and others by reconfirming (falsely) that there was a forward trade. The list was emailed by Mr Jemai to Mr Popkov and Mr Cherednikov.

325. Also on 22 March, Olga Volkova from Otkritie's back office asked Jemai to provide US$ quotes for the warrants on the settlement dates, so that the trade could be marked to market. She was directed to Mr Jemai by Mr Pinaev, who described him as a "*junior trader*" with responsibility for monitoring the Second Trade. Mr Jemai quoted US$ 15.875 for 16 March and US$ 16 for 17 March. Contrary to Mr Jemai's account, he did not simply repeat the information given to him by Mr Pinaev on the telephone (there was no such call), but gave Ms Volkova quotes which he knew were false.

326. On 23 March, Mr Popkov noticed an error in Otkritie's systems which was showing a US$ profit for a rouble-denominated bond. He asked Mr Jemai to change the figures and check the other non-US$ denominated bonds. Mr Jemai discussed the matter with Mr Urumov and Mr Pinaev who were plainly agitated and stressed to Mr Jemai the importance of ensuring that Otkritie's computer systems recorded the false price for the warrants. Mr Jemai informed Mr Popkov that he had contacted Bloomberg (which cannot have been true) and that the figures in the Otkritie systems were accurate (which was false as Mr Jemai well knew).

327. Towards the end of March, it appears that Mr Pinaev made contact with an old friend (Mr Ivan Kucherenko) at another broker, Quickline, to generate a false quotation on a "screenshot" for the warrants at four times the true market value. Mr Jemai emailed the false screenshot to Mr Popkov on 28 March. Mr Kucherenko was also well known to Mr Jemai. The purpose of this exercise is not entirely clear but it seems likely that it was part of an attempt to cover tracks.

328. On 30 March, there was an exchange of emails between Mr Urumov, Mr Jemai and Mr Pinaev, which shows they were aware of the fictional P&L generated by the fake forward trade in Otkritie's systems. Early in the day, Mr Jemai provided a detailed trade report to, amongst others, Mr Cherednikov, who worked in IT, and Ms Melnikayte. Later the same day, Mr Cherednikov emailed Ms Melnikayte a screenshot showing the false P&L for the Second Trade in Resource Navigator. Ms Melnikayte forwarded this to Mr Jemai, who sought the approval of Mr Urumov and Mr Pinaev, and spoke to them several times in the course of the day. Mr Urumov agreed with the (false) figures obtained by Mr Jemai and instructed him to send the screenshot to Mr Popkov (which he did). The stated P&L of c. US$ 17.3m depended on there being a genuine forward trade at US$ 13.8425 per cent.

329. Similarly, on 13 April, Mr Urumov sent Mr Popkov spreadsheets recording a (false) profit of c. US$ 17.3m, which was the result of a supposed forward trade with Threadneedle at US$ 13.8425 (rounded to US$ 13.843) per cent. The high profit reported by Mr Urumov was the main reason Mr Lokhov and Mr Popkov were so pleased with Mr Urumov's performance, and promoted him in the summer of 2011.

330. Meanwhile, in late March or early April 2011, Mr Popkov asked Mr Kondratyuk to check the price of the warrants which, as Mr Popkov thought, Mr Kondratyuk did by

calling Mr Munns (a third party broker) who confirmed the false price of US$ 15-17 per cent. However, Mr Kondratyuk's evidence is that in fact this was a scam i.e. Mr Kondratyuk hatched a plan with Mr Urumov and Mr Pinaev, whereby Mr Kondratyuk would pretend to call Mr Munns when in reality he would be speaking to Mr Pinaev. According to Mr Kondratyuk, that is indeed what then happened. Mr Munns has confirmed that he received no such call from Mr Kondratyuk. I reject the evidence of Mr Urumov and Mr Pinaev denying that this took place.

331. As to other subsequent events (in particular, various meetings which took place in June, July and August 2011), these were relied upon by both the claimants and the defendants to support their respective cases; such events were the focus of much attention in the course of the trial and there is no doubt that they are, in a general sense, an important part of the story. In part, they serve to corroborate the claims advanced. However, they were also heavily relied upon by in particular Mr Peto and Mr Casella in support of their would-be *ex turpi causa* plea but, as already noted, their applications to amend their respective Defences were rejected. However, in one sense such events do not – or at least may not – really matter at least so far as the claims against Mr Pinaev, Mr Urumov and Mr Jemai are concerned because there is, in my view, no doubt, that OSL suffered the loss which it now claims in relation to the Second Trade by latest when it paid over the sum of US$ 213,468.78 (i.e. on 18 March 2011) and that these individuals were at the heart of such fraud.

332. Further, I should say that these later events are – at least sometimes – somewhat confusing. That is so for at least five main reasons. First, on the claimants' side, there is, in my view, no doubt that they (in particular Mr Popkov and Mr Lokhov) honestly believed that there was a forward trade ie "sell" in place with Threadneedle – although there was, of course, never any such "sell" in place. Second, if the fraud concerning the Second Trade was not to be discovered, it was important for those involved in the fraud to maintain the deception. The result in this case is often the weaving of a web which becomes increasingly tangled. Third, the need for some "escape route" for the fraudsters was obvious. In that context, there is, in my judgment, no doubt that their chosen escape route was at some later stage to try to offload the warrants on to Threadneedle which would, of necessity, involve the perpetration of a further fraud – this time on Threadneedle. The suggestion that one might hide one fraud on A by committing another (perhaps even bigger) fraud on B might seem improbable or even foolish. But I have no doubt that that was the plan - driven, I suspect, by the fraudsters' hope of even more spoils. As already noted, although Mr Gersamia denies any involvement in the fraud on Otkritie which was the Second Trade, he frankly admits – and indeed asserts – his intention to carry out such fraud on Threadneedle although this proved, in the event, unsuccessful. Fourth, it is the fraudsters deliberately adopted a cunning and aggressive defence strategy which involved various nefarious strands including (i) an attempt to shift the blame ie. by saying that the Second Trade had been authorised not by Mr Urumov or Mr Pinaev but by Mr Popkov and Mr Lokhov; and (ii) an attempt to lay the groundwork to blackmail or at least intimidate Mr Lokhov by alleging that he had offered Mr Gersamia a bribe to assist in carrying out the proposed fraud on Threadneedle. Fifth, as time passed and it became increasingly clear that the original fraud might be discovered and that the intended fraud on Threadneedle might not take place, the fraudsters began to fall out or, at least, their relationships became somewhat strained.

333. It is for all these reasons that I propose to deal with these later events as briefly as possible.

The Umu dinner on 3 June 2011

334. In June, Mr Urumov told Mr Popkov that the market price of the warrants had increased by about 30%. Mr Urumov knew that this information was reported to Mr Lokhov. The evidence of Mr Lokhov (which I accept) is that he saw an opportunity to close out what he thought was the forward trade with Threadneedle before its scheduled maturity date in September, so as to realise a profit which could be split in such proportion as might be agreed with Threadneedle, free up liquidity for OSL and reduce leverage. It is important to understand that this thinking was founded on the false premise that there was an existing forward trade with Threadneedle – but of course there was none. However, as already stated above, I accept that that is indeed what Mr Lokhov thought; and on this basis Mr Lokhov asked Mr Urumov to arrange a meeting with Mr Gersamia in order to discuss *inter alia* early termination of the forward trade, which would enable Threadneedle to sell the warrants in a rising market, benefitting both parties.

335. The meeting took place at the Umu restaurant on 3 June 2011. The evidence of Mr Lokhov is that at the meeting, Mr Urumov and Mr Gersamia discussed with him (Mr Lokhov) the option of an early close-out, thereby confirming to Mr Lokhov that there was a forward trade; that Mr Lokhov and Mr Gersamia agreed in principle that Threadneedle would close the forward trade early, in a few weeks' time, and split the resulting profit between Otkritie (75%) and Threadneedle (25%); and that this appeared to Mr Lokhov as a legitimate commercial arrangement.

336. In evidence, Mr Urumov said that, even on the assumption that Mr Lokhov did believe that a forward trade had been executed, this proposed arrangement was "commercial nonsense". Initially, his explanation for that assertion was that (on the stated assumption) Threadneedle had already booked a profit on paper of US$ 3 (which, I understood to be US$ 3 per cent). Thus, Mr Urumov asked rhetorically in evidence: why would Threadneedle give up a profit that has already been booked in order to refund Otkritie a proportion (he said 75%) of that profit? In my judgment, this explanation is obviously wrong in particular because (on the stated assumption) it rests on the false premise that Threadneedle had already "booked" a profit. I am prepared to accept that if such forward trade had existed, Threadneedle might have been showing a notional mark-to-market profit as at say the beginning of June but there was plainly a risk that the market price of the warrants would fall between June and September. All other things being equal, whether or not Threadneedle would in fact have "booked" a profit would depend on the ultimate market price on the maturity date in September 2011 and whether they would then have sold the warrants at that time in the market.

337. It is fair to say that Mr Urumov realised very quickly in the course of his evidence that the explanation he had initially given was incorrect (although he did not admit any mistake) and he almost immediately offered a further explanation why he considered that Mr Lokhov's proposed arrangement was "commercial nonsense" viz. that Threadneedle could have taken an offsetting position in the same securities and have completely hedged their position. I am prepared to assume that such suggested hedging was theoretically possible; a possibility that was endorsed by Mr Gersamia in

evidence and also recognised by Mr Kasapis, the market expert who was called to give evidence by the Urumov/Pinaev defendants. However, such suggestion was never put in cross-examination by Mr Peto or Mr Casella to Mr Lokhov and, on that basis, Mr Berry submitted that for that reason alone, it is not open for them to advance such a case. Be that as it may, Mr Urumov's hedging suggestion does not, in my view, assist in the present context for at least three reasons. First, although it was, as I am prepared to assume, theoretically possible, I have no idea whether or not such "hedging" was realistic and practicable and there was no cogent evidence before the court that such hedging was realistic and practicable. On the contrary, Mr Kasapis' evidence was that he had not personally done any forward trades of these warrants and he had never seen any such trades. Second, I have no idea whether such "hedging" was commercially viable for this type and number of warrants in the state of the market at that time; and again there was no cogent evidence before the court to indicate that it was. Even on the assumption that this might have been commercially viable, it would almost certainly have involved additional counterparty risk (which may or may not have been acceptable to Threadneedle); and I have no idea how it might have been structured nor how much it might have cost. It would all depend on the perception of the market players (whoever they might be) as it stood in (say) June 2011 looking ahead to the maturity date in September 2011. Third, and perhaps most fundamentally in this context, the possibility that Threadneedle might have hedged its position does <u>not</u> make Mr Lokhov's proposed arrangement commercial nonsense. At best, it is simply an alternative. Ultimately, the attraction of Mr Lokhov's proposal to Threadneedle would depend upon their perception of what the market might do; the greater the perceived risk of the price of the warrants going down, the more sense it would make, from Threadneedle's perspective, to accede to the arrangement put forward by Mr Lokhov. Thus, I do not agree that Mr Lokhov's proposed arrangement was "commercial nonsense". On the contrary, it was, in my view, at least potentially commercially attractive although, at the risk of repetition, it rested on a false premise i.e. that there was a forward trade with Threadneedle.

338. The meeting at the Umu restaurant lasted a number of hours. There are no notes but it is common ground that the conversation was in part in English and in part in Russian; and that Mr Gersamia left the meeting after some time leaving behind Mr Urumov and Mr Lokhov.

339. Although there are, as I have said, no notes, there is a recording which (it is said) was taken secretly during the meeting and which is relied upon by, in particular, Mr Gersamia, to show (it is said) that Mr Lokhov offered him (Mr Gersamia) a bribe as part of Mr Lokhov's proposed arrangement to offload the warrants on to Threadneedle. As I have stated, it is common ground that this is not relevant to any pleaded issue but only to Mr Lokhov's general credibility.

340. The recording in question is nearly 5½ hours long. It was found on a USB stick in the Dunant safe deposit box (the "Original Recording"). The background is very noisy and the quality of the Original Recording is very poor but, on its face, it would certainly seem to be a recording of a conversation between Mr Urumov, Mr Gersamia and Mr Lokhov. In addition, there is a recording, which is just over 12 minutes long, disclosed by Mr Urumov in November 2011 (the "Short Recording"). A simple examination of the relevant transcripts (see below) shows that the Short Recording is a montage of disparate sections of the Original Recording. In fact, it contains pieces

of conversation in English which took place about 2 hrs 20 mins into the dinner (while Mr Gersamia was present) and pieces of conversation in Russian which took place about 5 hours into the dinner (by which time Mr Gersamia had left).

341. Although Mr Lokhov confirmed that his voice could be heard on at least part of these recordings, the provenance and authenticity of these recordings are highly contentious. Mr Gersamia initially said in his second statement dated 14 March 2013 that he had not recorded any conversation with Mr Lokhov. However, in his third statement dated 30 June 2013 (served during the trial), Mr Gersamia said that, contrary to his earlier statement, he had recorded the conversation at Umu on his Blackberry which he had placed behind a cushion in the restaurant and which he collected the next day. He also said (in his third statement) that in August 2011 he posted a copy of the recording through the letterbox of Mr Urumov's home. In his oral evidence, Mr Gersamia confirmed what he had said in his third statement and that what he had said in his earlier statement was false. However, the difficulty with Mr Gersamia's evidence is that it is clear from the last few minutes of the Original Recording that the person carrying the recording device is Mr Urumov - because towards the end (when Mr Gersamia had already left) one can hear Mr Urumov and Mr Lokhov thanking the restaurant staff, leaving the restaurant and saying goodbye to each other. Thus, as submitted by Mr Berry, it is my conclusion that not only did Mr Gersamia lie in his second statement but that his latest evidence to the court is also a lie; that, for reasons that are not clear, Mr Gersamia has been prepared to deceive the court possibly in an attempt to assist Mr Urumov's defence; and that Mr Gersamia's claim in evidence that he gave away the device he supposedly used to record the conversation to "*the son of a woman who helps clean my parents' house*" is, at best, difficult to accept as true.

342. So far as Mr Urumov is concerned, he originally said in his second statement that he did not take the recording and that he was not sure who did. I do not accept that evidence. As submitted by the claimants, this seems to be yet another brazen lie by Mr Urumov: as anyone listening to the last few minutes of the Original Recording can tell, the only two individuals who can be heard are Mr Urumov and Mr Lokhov, and the recording device remains with Mr Urumov as he gets into his car to drive home. That explains why the USB stick containing the Original Recording was discovered in the Dunant safe deposit box, to which only Mr Urumov and his wife had access.

343. As demonstrated by a straightforward analysis of the transcripts and translations produced by Mr Urumov of the Russian conversation (i.e. as part of his second statement and the slightly fuller versions disclosed in November 2011), the Short Recording is a montage of disparate parts of the Original Recording. If there were any truth in Mr Gersamia's latest evidence that he was the one responsible for making the Original Recording, the natural conclusion would be that he was responsible for doctoring evidence by producing the Short Recording – although it may well have been done by Mr Urumov or by someone on Mr Urumov's instructions or perhaps by Mr Urumov and Mr Gersamia acting in concert. However, I recognise that this is speculative: the fact is that it is, in my view, quite impossible to reach any positive conclusions with regard to the provenance or reliability of this material. All that can safely be said in this context is that both Mr Gersamia and Mr Urumov have lied in court about the provenance of this material; and that it is difficult to imagine any purpose for 'splicing' the Original Recording in this way, other than to mislead the

Court. In any event, whatever may be the true story behind the provenance of the Original Recording it seems that the overwhelming likelihood is that it was taken as part of an aggressive defence strategy i.e. somehow to trap Mr Lokhov in some way or other.

344. In addition, there are 5 "transcripts" of the recordings which have been produced for the purpose of these proceedings viz:

i) First, a transcript and translation of the decipherable part in Russian of the Original Recording, starting at 4 hrs 14 mins 06 secs, which has been agreed by the parties (the "Original Transcript").

ii) Second, a long quote in Mr Urumov's second statement, which is a montage of pieces of conversation in Russian in the Short Recording. Some of those pieces of conversation originate from the indecipherable part of the Original Recording (and therefore cannot be located in the Original Transcript); others, however, have been located in the Original Transcript.

iii) Third, a pair of virtually identical transcripts of part of the conversation in English, commissioned by the Urumov defendants, and produced by Audio Forensic Services on 16 and 21 November 2011. This appears to be an excerpt from the Original Recording at 2 hrs 19 mins 49 secs – 2 hrs 25 mins 00 secs. Due to the poor quality of that part of the Original Recording, accuracy cannot be established.

iv) Fourth, a pair of virtually identical translations of conversation in Russian disclosed by the Urumov defendants in November 2011. This is the same as the version in Mr Urumov's second statement (i.e. a montage) save that it contains slightly larger pieces of conversation.

v) Fifth, a short transcript prepared by the Gersamia defendants in the second half of June 2013, apparently of the English part of the Short Recording lasting about 5 minutes (the "Short Transcript") during which Mr Lokhov puts forward some kind of general proposal which would involve splitting P&L. Although the detail is lacking, this is hardly surprising given the general nature of the conversation, the inaudible gaps and the surroundings in which the conversation took place. However, such a general proposal seems entirely consistent (or at least not inconsistent) with Mr Lokhov's evidence with regard to his proposed arrangement. It is this part of the Short Recording and this Short Transcript which, submitted Mr Casella, shows that Mr Lokhov offered Mr Gersamia a bribe. The claimants were invited to agree this transcript by the Gersamia defendants, but the claimants say that due to the poor quality of that part of the Short Recording, accuracy cannot be established. The result is that this transcript is unfortunately not agreed. At the invitation of Mr Casella, I confirm that I have listened myself to this part of the Short Recording a number of times. In summary, my conclusions are that (i) it is impossible for me to say whether, even on a balance of probability, this part of the Short Recording is continuous or whether it has been "spliced" together; and (ii) there are various sections in the Short Recording where it is simply impossible to hear what is being said and which may be important in order properly to understand what is being said.

345. Before considering what these recordings/transcripts show, I have to say that it was difficult, if not impossible, to understand the case advanced by Mr Casella on behalf of Mr Gersamia with regard to this supposed bribe. According to Mr Gersamia's evidence, Mr Lokhov was asking him (Mr Gersamia) to organise a structure to take the warrants; that if he (Mr Gersamia) did this, there would be a "pay-out" for him (Mr Gersamia); and that it was clear to him (Mr Gersamia) that "… *it would be a transaction which was significantly off the market price, but he did not indicate by how much* …". In context, Mr Berry submitted that this reference to the proposed transaction being "... *significantly off the market price* …" must mean a price which was higher i.e. above the then market price which seems to me probably correct. However, as submitted by Mr Berry, it seems to me that this is, on any view, nonsensical. Further, the difficulty is that such a case was never put to Mr Lokhov whose evidence was that he (Mr Lokhov) suggested that OSL would sell at a price that was higher than the intended forward trade but lower than the then current price. In any event, there is, so far as I can tell, nothing in these recordings/transcripts which supports or corroborates Mr Gersamia's evidence as quoted above.

346. Turning then to the transcripts, I accept that the Short Transcript is, as far as I can tell, broadly accurate of what I can hear on this part of the Short Recording; that on its face, the Short Transcript includes a reference apparently by Mr Lokhov to the production of a "brokerage agreement" which, as submitted by Mr Casella, is capable of being a reference to an agreement whereby Otkritie might pay Mr Gersamia a bribe and that this conclusion is supported by the reference by Mr Gersamia to "..*a structure…yeah, I mean my personal, but my personal* …" and a "..*shell company, far away* ..." and the reference by Mr Lokhov to a BVI company which would be "*our company*"; and that the Short Transcript also includes another important short passage where Mr Gersamia says that "*I*" (i.e. Mr Gersamia) should "… *get around 10% of the whole thing* ...". I agree that, on its face, this latter passage would seem to amount to a demand or request by Mr Gersamia to be paid a kickback. However, the recording then becomes inaudible; and even on the unproven assumption that the recording is continuous, it does not in terms record an agreement by Mr Lokhov to accede to Mr Gersamia's demand or request in this passage still less an offer by Mr Lokhov to pay a bribe. Given the covert circumstances in which the Original Recording was apparently taken, the lies made concerning its provenance and the other uncertainties and difficulties which I have already referred to with regard to both that recording and the Short Recording, I strongly suspect that the purpose of the recordings was indeed to trap Mr Lokhov and thereafter blackmail or intimidate him. In any event, it is, in my view, unsafe to draw any positive conclusions from this material. In particular, I am not prepared to draw a conclusion that Mr Lokhov offered Mr Gersamia a bribe as part of his proposed arrangement.

Meeting at Pokrovka Hotel – early June 2011

347. According to Mr Kondratyuk, there was another meeting at the Pokrovka Hotel in Moscow in early June 2011 between himself and Messrs Urumov, Pinaev and Jemai when Mr Urumov said that Mr Gersamia had told him and Mr Gherzi that he (on behalf of Threadneedle) would purchase the warrants from Otkritie at the end of July or beginning of August 2011; and that he (Mr Gersamia) then intended immediately to resign from Threadneedle. According to Mr Kondratyuk:

i) There was a discussion of potential scenarios following Threadneedle's purchase of the warrants, namely (i) Threadneedle making a complaint to the authorities (FSA and SFO) which, in Mr Urumov's and Mr Gersamia's view, was improbable because of the likely negative publicity it would entail; alternatively (ii) Threadneedle making a private claim against Otkritie, which would avoid publicity, and would likely lead to an agreement that either one or the other (or both) shoulder the loss from the fraud.

ii) There was also a discussion of the technical parameters of the OSL-Threadneedle trade. Because there were no trading lines between the two entities, a switch was required, and Mr Urumov tasked Mr Pinaev and Mr Kondratyuk with contacting potential switches (most of whom, eventually, declined to act, because the price was so far off-market: see below).

iii) Mr Urumov tasked Mr Jemai with gathering compromising material on Otkritie, to enable him to accuse Otkritie of defrauding financial institutions and attempting to defraud Threadneedle.

iv) Mr Urumov planned to repeat the Argentinian Warrants Fraud, doubling the proceeds of fraud for the conspirators.

Ritz Hotel Meeting - late June/early July 2011

348. In late June or early July, Mr Lokhov and Mr Gersamia met at the Ritz Hotel in London. This was organised by Mr Urumov at Mr Lokhov's request. It was the first time Mr Lokhov had met with Mr Gersamia since the Umu dinner, and the purpose, so far as Mr Lokhov was concerned, was to discuss further the closing out of the forward trade. According to the evidence of Mr Lokhov (which I accept), Mr Gersamia told him that the forward trade would be settled in due course, and that he needed a couple of weeks to sort out his portfolio; that Mr Gersamia stressed the need to maintain confidentiality so as not to inflate the market price; and that Mr Lokhov did not put any pressure on Gersamia, nor was there any mention of any bribe.

Attempts to offload the warrants onto Threadneedle

349. Meanwhile, from about June onwards, Mr Pinaev and Mr Jemai made several unsuccessful attempts to find a switch for the sale of the warrants to Threadneedle, including BCP Securities, BGC, Raiffeisen, Tullett Prebon, Adamant and Troika Dialog. Most of them declined to act because the price proposed was so off-market.

350. Thereafter, it was Mr Kondratyuk's evidence that he met Messrs Urumov, Pinaev and Jemai at Mr Pinaev's house near Barcelona during which they discussed the imminent sale of the warrants to Threadneedle, and the circumstances that would enable Mr Gersamia to enter the trade in Threadneedle's system, before resigning and fleeing using a forged passport; that they decided that each of them would leave Otkritie's employment soon after the sale to Threadneedle was consummated; and that they agreed to use a broker called Newedge as a switch, because Mr Pinaev had identified Mr Efimov, a trader at Newedge, who was prepared to participate in a deal which was four times off-market. However, according to Mr Kondratyuk, the difficulty was that there were no trading lines between Otkritie and Newedge; that therefore, in order to persuade Mr Efimov to conduct the trade in the absence of a trading line, Mr Pinaev

offered Mr Efimov a bribe of US$ 1m, which Mr Efimov declined; and that Mr Urumov and Mr Pinaev later decided to impersonate Mr Lokhov in a telephone conversation with Mr Efimov, and to offer Mr Efimov a bribe of US$ 5m to secure Newedge's participation as a switch. In his deposition in the US, Mr Efimov certainly recalled speaking to someone who introduced himself as Mr Lokhov although, according to the deposition, his evidence was: "*…it could have been Lokhov or it could have been sombody pretending to [be] Mr Lokhov and [he] would not know the difference*". The evidence of Mr Lokhov (which I accept) was that he never spoke to Mr Efimov or offered him a bribe.

351. Mr Urumov, Mr Pinaev and Mr Jemai all denied in evidence being party to this scam. In any event, on or by 18 July 2011, it was proposed that OSL would sell the warrants to Newedge via the US brokerage Tullett Prebon; and Newedge would sell on to Threadneedle. The documentary evidence shows, unequivocally, that this proposal to offload the warrants was being directed by Messrs Urumov, Pinaev, Jemai and Gersamia and not (as they have sought to suggest) by Mr Lokhov. The relevant material is extensive and includes in particular a detailed internal Investigation Report prepared by Threadneedle dated 26 August 2011. This is of particular relevance so far as Mr Gersamia is concerned. For present purposes, the relevant events can be summarised as follows.

352. By early July, Mr Gersamia was talking with his friends about his plans to leave Threadneedle. Mr Pinaev put Mr Gersamia in touch with Mr Efimov. On 11 July, Gersamia had a Bloomberg chat with Mr Efimov, during which he gave Mr Efimov the ISIN for the warrants and Threadneedle's Euroclear details. Although it appears that Mr Pinaev had told Mr Efimov that there were trading lines between Threadneedle and Newedge, Mr Gersamia was doubtful and there was a debate between him and Mr Efimov about the existence of such lines. It is clear from the chat that they were discussing the proposed trade in warrants between OSL and Threadneedle, via Newedge. The proposed transaction was priced at four times the market price.

353. On 25 July, there was a lengthy exchange of SMS messages between Mr Gersamia (using his old Blackberry) and Mr Pinaev (using his Spanish mobile phone). As appears from these messages, Mr Gersamia was trying to work out how he could enter the purchase on the Threadneedle system, in circumstances when he knew he would be asked why he was buying securities without having an onward sale to a third party. His story was going to be that he had lined up a Russian bank as a buyer but they had unexpectedly dropped out. So, he asked Mr Pinaev to get one of his contacts (who turned out to be Ivan Kucherenko of Quickline) to send him a false message, which Mr Gersamia could then show to his bosses if they queried the trade. There was very frequent contact between Mr Gersamia and Messrs Urumov and Pinaev around this time. In contrast, Mr Berry submitted that Mr Gersamia apparently made only one attempt to call Mr Lokhov during this period (i.e. at 12.39 am on 26 July), which lasts for 8 seconds (hence, probably went straight to voicemail). I am not sure that that is necessarily correct but in any event there is no evidence that Mr Lokhov was involved in arranging an onward sale <u>by</u> Threadneedle to a third party.

354. On 1 August, Mr Gersamia confirmed a trade for Threadneedle to buy 937 million warrants from Otkritie via Newedge as a switch at around US$ 16 per cent, which he knew was about four times the true market price. However, as a result of an error or a

technical problem, Mr Gersamia was unable to input the trade into Threadneedle's system. On 2 August, Tullett Prebon pulled out from the trade because their clearing house (Pershing) refused to accept the trade at a price of US$ 16 per cent. Therefore, the decision was taken by, in particular, Mr Urumov to do the deal direct with Newedge, without any intermediate switch. On 3 August, another attempt was made to execute the sale of 937,500,000 warrants to Threadneedle via Newedge at the inflated price of US$ 16 per cent, i.e. a total of US$ 150m. Mr Jemai (who was closely involved in executing and monitoring the trade alongside Mr Pinaev) issued a ticket on behalf of Otkritie, which was confirmed by Mr Efimov. Mr Efimov issued tickets on behalf of Newedge, which Mr Gersamia confirmed, and Mr Gersamia then entered the purchase of the warrants in the Threadneedle system. As he did so, Mr Gersamia was presented with a pre-trade compliance warning, but he overrode and ignored this. The plan was to settle the trade the next day, 4 August, when Mr Gersamia knew his boss would be out of the office on annual leave. On 4 August, JP Morgan (clearing house for Threadneedle) queried the price of the warrants and suggested that it should be the same amount but in ARS not US$. Mr Gersamia's response was untruthful: he said he was "*not sure why like that, perhaps has some pricing source issues*", whereas he knew full well that he had committed Threadneedle to pay about US$ 148m (ignoring compliance warnings) for something that he knew was in fact worth about US$ 37m. In evidence, Mr Gersamia frankly admitted his intention to carry out the fraud on Threadneedle; and that he had lied to JP Morgan.

The balloon goes up

355. In the event, internal systems at Threadneedle discovered the intended fraud. For present purposes, the details do not matter. It is sufficient to note that Threadneedle cancelled the trade with Newedge before it could settle thereby averting a huge loss.

356. Thereafter, Mr Gersamia told people that he had lost his Blackberry and was off sick – which were lies. He was suspended on 5 August. Internal investigations were commenced immediately culminating in a detailed report dated 26 August 2011 with the recommendation for a full disciplinary hearing. During the course of those investigations, Mr Gersamia knowingly told a series of lies which he largely admitted in evidence but which it is unnecessary to set out in detail. For the avoidance of doubt and contrary to later suggestions by him, at no point during the meetings with Threadneedle investigators on 5 or 16 August did Mr Gersamia suggest that he put the trade through because he felt pressured by Mr Lokhov. In any event, I reject such suggestion: Mr Lokhov did not exert any pressure on Mr Gersamia.

357. As for Mr Urumov and Mr Pinaev, my general impression is one of increasing panic about this time. In particular, it is important to bear in mind that so far as Otkritie were concerned there was a binding forward trade with Threadneedle which would mature latest in early September 2011; and that, if Threadneedle did not pay, the initial fraud would almost certainly be discovered. In that context, Threadneedle's investigation of Mr Gersamia (which Mr Urumov was aware of) was obviously a crucial event. Following Mr Gersamia's suspension, the main events can be summarised as follows.

358. On 8 August, Mr Urumov fired Mr Pinaev. It was Mr Popkov's evidence (which I accept) that Mr Urumov told him that this was because he was unhappy with Mr

Pinaev because he (Mr Pinaev) was meant to be helping at the FI desk in London but was rarely in the office. However, in truth, it seems to me that the real reason was so that Mr Pinaev could leave Otkritie as quickly as possible before any suspicion fell on him in relation to the fraudulent trades.

359. Mr Urumov also tried (with Mr Jemai's assistance) to delete Mr Pinaev's Bloomberg chats on 8 August. In evidence, Mr Jemai confirmed that Mr Urumov had asked him to delete Mr Pinaev's profile, his chats: "*everything*". In my judgment, the only reason for so doing was to destroy some of the most incriminating evidence of Mr Pinaev's and his co-conspirators' involvement in the Argentinean Warrants Fraud as Mr Jemai must have realised or at least strongly suspected despite his protestations to the contrary.

360. Meanwhile, Mr Lokhov was unaware that Mr Gersamia had been suspended. He still wished to go ahead with his proposed arrangement and was still labouring under the (false) impression sustained by Mr Urumov and Mr Gersamia that there was a genuine forward trade in place and that Threadneedle would be prepared to settle it early. With this in mind, Mr Lokhov requested Mr Urumov to set up a meeting with Mr Gersamia (who apparently was on holiday during part of this period). This took place on 17 August at the Four Seasons Hotel in London. In evidence, Mr Gersamia initially denied that he had met Mr Urumov in advance of that meeting but it is plain from records of calls and text messages that they did indeed meet – probably on 15 August at some bar. We will never know for certain what was discussed between Mr Urumov and Mr Gersamia during that earlier meeting but despite Mr Gersamia's protestations to the contrary, it seems to me that the overwhelming likelihood is that Mr Gersamia told Mr Urumov that he had been suspended by Threadneedle (if he had not previously done so) and that they put together some plan (the claimants say a "charade") with regard to what they would say to Mr Lokhov at the Four Seasons.

361. The evidence of Mr Lokhov (which I accept) is that in advance of the meeting with Mr Gersamia, he had dinner with Mr Urumov earlier that evening at the Four Seasons to agree their approach; that their strategy was that he (Mr Lokhov) would stay calm; and that Mr Urumov was to play the role of "bad cop" as he was close to Mr Gersamia. When Mr Gersamia arrived, Mr Lokhov's evidence is that they sat together in the bar at the Four Seasons. According to Mr Urumov's evidence, he (Mr Urumov) did not sit with them but "*sat on a neighbouring table in the lobby*". I do not accept that evidence: it is inconsistent not only with Mr Lokhov's evidence but also Mr Gersamia's evidence (when he says that they "*more or less sat together*") as well as what Mr Urumov said at a meeting at the end of August in Milan. According to Mr Lokhov's evidence (which I again accept) this meeting lasted over 2 hours; at the start, Mr Urumov asked Mr Gersamia why Threadneedle had not settled the trade; things then became heated; they then discussed the trade with Threadneedle, still negotiating the profit split; Mr Gersamia said that he could settle the deal "next week" although Mr Lokhov said that the deal must be settled "tomorrow". As submitted by Mr Berry, given Mr Gersamia's suspension from Threadneedle, these discussions and supposed negotiations were a charade. The claimants say that the obvious inference is that Mr Urumov and Mr Gersamia were seeking to incriminate Mr Lokhov, by eliciting comments from him which could subsequently be mischaracterised as attempted bribery; and that Mr Urumov must have recorded the meeting (as he did at Umu) but has concealed the recording because it would corroborate the truth of Mr

Lokhov's evidence and undermine Mr Urumov's evidence. In my view, that scenario is speculative but certainly very plausible. In any event, it was only at the end of the meeting that Mr Gersamia revealed that he had been suspended, and produced a letter to that effect from Threadneedle's head of compliance. Mr Lokhov was shocked by this turn of events.

362. After the meeting, Mr Lokhov and Mr Urumov went to Mr Lokhov's flat when Mr Urumov revealed to Mr Lokhov, for the first time, that contrary to his (Mr Urumov's) previous statements, there was no Bloomberg confirmation for the forward trade between Otkritie and Threadneedle. Mr Lokhov was shocked by this news but he believed that the warrants were worth US$ 15-16 per cent and that therefore Otkritie had adequate collateral. Mr Urumov knew this to be false but failed to correct Mr Lokhov's mistaken belief. Mr Urumov then went into the kitchen and called Mr Gherzi with the purpose (say the claimants) of setting up Mr Lokhov by getting him to admit that the Second Trade was his (Mr Lokhov's) deal, and recording the conversation.

363. Mr Lokhov then returned to Moscow to brief senior management and a decision was taken to appoint solicitors to assist Otkritie. Mr Lokhov asked Mr Urumov to come to Moscow to speak with senior management but he refused.

364. On 18 August, Mr Urumov resigned. He stopped answering his mobile, did not respond to text messages, and avoided contact with Mr Lokhov.

365. It was shortly afterwards that Mr Lokhov discovered that the warrants were in fact worth only about US$ 50m i.e. about US$ 4 per cent. This was on or about 24 August. The circumstances in which this important discovery was made are set out in paragraphs 26-33 of Mr Romaev's statement which it is unnecessary to set out in full. It is sufficient to say that I accept that evidence. As stated by Mr Romaev, on the instructions of Mr V Belyaev, an urgent meeting was then arranged with Mr Urumov.

Meeting at Milan Malpensa Airport – 28 August

366. The meeting took place at Milan Malpensa Airport on 28 August and was attended by Mr V Belyaev, Mr Lokhov, Mr Popkov, Mr Romaev, and Mr Urumov. Mr Gherzi also arrived in the course of the meeting. The meeting was recorded and there is a transcript. For present purposes, it is sufficient to highlight the following:

i) Mr Urumov repeated (his lie) that he personally did the First Trade with Threadneedle and it had been a buy-sell with Gersamia at Threadneedle. ("*I have already said that we made the trade in this very security … We had a history*"; "*And don't forget that we had [already] made a trade. You see, the chart doesn't mean anything to me when there is a tradable [sic] price for which you make a trade, you don't need anything else.*" "*Because I saw that he was selling it slightly below the market price, cheaper. That's why I bought it.*"

ii) Mr Urumov repeated the falsehood that Mr Gersamia approached him (or instructed him) to do the Second Trade. ("*…He approached us, this and that, then, in the middle of the week, when I sent that e-mail and we said we would do it, I checked it…*" "*[P: Apparently, he gave you the instruction for the first*

time, when you sold it to Norvik. And then he gave you the instructions for the second time …] U: Yes …”)

iii) Mr Urumov admitted (contrary to his case in these proceedings) that his email to Mr Popkov on 4 March did, indeed, set out the terms of the Second Trade, and was the basis on which Mr Pinaev and Mr Jemai executed the buy leg of the Second Trade. (“*On the basis of that email I sent you, I copied Ruslan Pinaev … I told Ruslan Pinaev that you would settle the trade with … I remember, you replied to that email “OK,” you replied “OK” to me, you CCed Sasha and Ruslan … So it is on the basis of this email that Ruslan settled the transaction with Adamant.*”)

iv) Mr Urumov pretended that he had an email from or a Bloomberg chat with Mr Gersamia in which Mr Gersamia instructed or agreed the Second Trade on behalf of Threadneedle, and that Otkritie could sue Threadneedle on the strength of that evidence. (“*Well, at first when I forwarded his e-mail, I don't remember exactly if it was his Bloomberg of [sic] e-mail. I sent it to Dima, I downloaded … there was an email from his [sic] where he providd [sic] the details of the security … [L: from Threadneedle?] … Yes, there was an email from him … Yes, I don't remember if it was an email or a Bloomberg, but it was there, he sent the details … i mean, there were details, like the price, the size, all that description … I forwarded it all*” “*And let's sue them, let's print out the chat which says that they issue instructions for us and that there is a confirmation. Let's go sue them …*” “*B: What do you suggest we sue him for? U: For the fact that he did not settle the transaction with us. We had a confirmation with him …*”

v) Mr Urumov stated that he had checked the price at the time of both the First and Second Trades (which was true) and it was really US$ 13-15 per cent (which was a lie). He said (knowing it to be untrue) that the purchase price paid by Otkritie was below market price. He even went so far as to speculate that the price of the warrants had plummeted to about US$ 3.85 from a high of about US$ 16 in March 2011. (“*…we checked the prices on BGN, checked the prices on Reuters – everything was fine …*” “*Because I saw that he was selling it slightly below the market price, cheaper. That's why I bought it.*” “*… We did check it, you see. We had made transactions. It is not like we bought it in the morning and that's it. We had made a trade in it [before]. Checked the price.*” “*Because he was selling it below the market, we checked the price …*” “*I was also sure … Well I still believe that this was the price [16], I don't believe it was 4. It's just not possible.*” “*…Why are you so sure that the price has not changed at all? … maybe they dumped it into the position, and it just went down, why is this not possible?*”

vi) Mr Urumov admitted (contrary to his case in these proceedings) that he was well aware of the attempts to sell the warrants to Threadneedle via Newedge, although he lied by suggesting that it was Mr Gersamia (as opposed to Messrs Pinaev, Jemai and himself) who was directing those attempts. (“*…He told us all the switches. He told us to do Newedge, he told us to do Tullett New York. He wold [sic] us which switches we should do.*”

367. In addition, it seems plain that, as submitted by Mr Berry, Mr Urumov's tactic during this Milan meeting was to try to intimidate Otkritie presumably in the hope of persuading them to refrain from properly investigating his conduct. In particular:

   i) Mr Urumov announced the spectre of Mr Gersamia suggesting that "he" (Mr Urumov) or "we" (presumably Mr Urumov and Mr Lokhov together) offered him (Mr Gersamia) a "bribe". This is presumably a reference back to the Umu meeting which I have already dealt with above. For present purposes, it is sufficient to note that the allegation that he and Mr Lokhov had offered Mr Gersamia a bribe is repeatedly, though politely, denied by Mr Lokhov. What is also particularly interesting is the way Mr Urumov poses the question: "*…And what if he [Mr Gersamia] tells me in response that I [Mr Urumov], that we [Mr Urumov/Mr Lokhov?] offered him a bribe? And takes out the recording?*" As I have already indicated, it is my conclusion that the likelihood is that Mr Urumov himself took the Original Recording at the Umu meeting but that was unknown to the other attendees in Milan whereas the suggestion here is that the recording is Mr Gersamia's own.

   ii) Mr Urumov lied that Mr Gersamia had emailed Mr Urumov his Seychelles account details to facilitate the payment of the bribe. This was not true: Mr Gersamia did not personally have any account in the Seychelles, although he had been prepared to lie to the Court in pretending, initially, that he did.

   iii) Mr Urumov made the false allegation that the trade with Threadneedle was "illegal parking".

368. In contrast, whilst Mr Urumov was seeking to dissuade Otkritie from investigating, taking legal advice, or communicating with the regulatory authorities (on the false premise that Otkritie's dealings with Threadneedle were in some way unlawful) it is noteworthy that Mr Lokhov, Mr Popkov and others were willing to be open about what had happened. They believed that Otkritie had done nothing wrong but had suffered a loss which it was entitled to investigate and (if so advised) to take legal action to recover.

369. Mr Berry submitted that what happened at the Milan meeting was the first, nascent sign of Mr Urumov's and Pinaev's defence strategy, which had been conceived with the other conspirators, viz falsely accuse Otkritie of wrongdoing; compile allegedly compromising material on Otkritie; present false evidence to the Court in an effort to fix Mr Popkov and others with responsibility for the Second Trade; misleadingly distance Mr Urumov from the Second Trade; and accuse Otkritie of seeking to defraud Threadneedle; and that, as the litigation progressed, this aggressive defence strategy truly came to pass, thereby corroborating Mr Kondratyuk's evidence, which was either truthful or improbably prescient. I accept that submission.

370. In light of the legal principles which I have summarised above and my findings of fact as stated in the previous section, I now propose to consider the various specific claims advanced by the claimants against the various defendants.

Part VII: The Urumov defendants

Mr Urumov

371. In light of the factual findings already stated above, my conclusions with regard to Mr Urumov are as follows:

i) He made all the fraudulent misrepresentations summarised in paragraph 38 above. Such fraudulent misrepresentations were relied upon by OSL in entering into the Second Trade and transferring the sum of US$ 213,468,750 thereby causing OSL loss in the sum of US$ 150,933,750. On this basis, Mr Urumov is liable for damages to OSL in the tort of deceit and/or conspiracy for that sum.

ii) Mr Urumov is also liable to OSL for such loss by way of damages and/or equitable compensation and/or an account on the basis of the breach of his own fiduciary duty and/or dishonest assistance in Mr Pinaev's and/or Mr Kondratyuk's breaches of their fiduciary duties.

iii) Mr Urumov is also liable to OSL for knowing receipt in relation to the sum of US$ 120m received by Arcutes (alternatively, if it matters, the lesser sum received by Sun Rose) by way of damages and/or equitable compensation and/or an account. In my judgment, the court is entitled to "pierce the corporate veil" in these circumstances on the basis that these companies were plainly used by Mr Urumov as a device or facade to conceal the true facts thereby avoiding or concealing his personal liability: see *Trustor AB v Smallbone (No 2)* [2001] 1 WLR 1177 at §23 per Sir Andrew Morritt V-C; *Petrodel Resources Ltd v Prest* [2013] 3 WLR 1.

For the avoidance of doubt, such liabilities are concurrent not cumulative.

372. In my view, these conclusions are fortified and reinforced not only by the events (as I have already summarised above) relating to the initial flow of monies from OSL to Adamant, Gemini/Snoras and ultimately, so far as Mr Urumov and Ms Balk (the "Urumovs") are concerned, the sum of US$ 36,978,000 to Sun Rose but also by what then happened to such monies thereafter.

373. In summary, as appears from Figure 6, the vast bulk of such monies was used to purchase for £19m, through another newly-acquired offshore vehicle (Dunant), a luxury home at 42 Avenue Road, London NW8 ("42 Avenue Road"), for which purpose approximately US$ 33.9m was transferred from Sun Rose to Dunant on 28 March 2011 on Ms Balk's instructions i.e. almost immediately after the transfer of funds from Gemini to Arcutes and then from Arcutes to Sun Rose as described above. Most of the other monies in the Sun Rose account had been transferred on 21 March 2011 to Denning in two tranches, totalling US$ 2,280,044.26 (around half to its Credit Suisse account and half to its Clariden Leu account).

42 Avenue Road

374. Following the entry of default judgment against Dunant in these proceedings on 1 March 2012, the claimants have now obtained title to that property. So, in certain respects, this part of the case is of less financial significance than might otherwise be the case. Notwithstanding, the claimants say that this part of the story is important because (i) it further supports and confirms Mr Urumov's involvement in the fraud; and (ii) it provides an independent basis for the claims advanced against Ms Balk. In

particular, the claimants say that Sun Rose and Dunant were both beneficially owned and controlled by Mr Urumov and Ms Balk and that they jointly decided to use Mr Urumov's share of the fraud proceeds (as Ms Balk well knew) to buy 42 Avenue Road and to carry out building works in order to use it as a family home for themselves.

375. This is disputed by the Urumovs. In summary, although they accept that, at least in March 2011, both Sun Rose and Dunant were beneficially owned and controlled by them, they say that the purchase of 42 Avenue Road was not as a family home for themselves but rather was a genuine commercial investment made by Dunant on behalf of Gemini pursuant to what has been described as the Sun Rose IMA. The Urumovs now claim that they offered £19m for 42 Avenue Road on the basis of "*… Ms Balk's knowledge of the market, and influenced by the general research we undertook, and knowing that the vendor was eager to sell ...*"; that 42 Avenue Road "*was an excellent investment for the Gemini funds*"; and that the role of Ms Balk was to manage the construction process

376. In response, the claimants say that these are all lies; that the truth is that the Urumovs were desperate to find a luxurious London home on which they could quickly spend their ill-gotten gains; and that this no doubt explains why they paid £19m for a property that had been purchased for less than £8m just three years earlier and was in March 2011 only worth around £11 to 13m as appears from the letter from the vendor (David Tucker, an English solicitor), who clearly could not believe his luck in finding such desperate purchasers with so much ready cash. I agree that these points raise some suspicions although I accept that this property had somewhat special features; that it was located in a particularly attractive (and very expensive) part of London; that its value may be a matter of debate; that valuing this type of property is or at least may well be far from easy; and that, as submitted by Mr Peto, the value suggested by the claimants may be an underestimate.

377. Be that as it may, it is my conclusion that the purchase of this property was not a genuine commercial investment made by Dunant on behalf of Gemini pursuant to the Sun Rose IMA but that it was probably purchased as a family home for the Urumovs themselves. This is so for the following reasons.

378. First, it is important to bear in mind (again) the nature and timing of the suggested investment by Gemini i.e. within days of Gemini/Snoras receiving what is, on any view, a huge sum constituting the proceeds of fraud, Gemini decides to pay back some 80% of it to Arcutes including some US$ 33m for commercial investment by Mr Urumov.

379. Second, according to Mr Urumov, he considered that the best way to invest his share of the Gemini 'loan' monies was to put almost <u>all</u> of it into that sector of his home town's (London) residential property market where families like his like to live, under the commercial management and direction of his wife. On its face, that seems difficult to accept: as it seems to me, no sensible investment manager would put all of his client's eggs in one basket in this way, especially if the investment monies had really been advanced pursuant to an agreement that could be terminated by the lender with just a week's verbal notice. Further, on the assumption that this suggested investment of some US$ 33m by Gemini was genuine, one would inevitably expect to see some record of its acceptance as well as some kind of evaluation, recommendation,

analysis, presentation, review, monitoring and reporting of this 'investment', as required by clause 1 of the purported Sun Rose IMA. However, there is no documentary record of this kind – or of any kind – at all.

380. Third, as I have already concluded, the Sun Rose IMA is a fake or a sham. It bears all the hallmarks of a document designed to disguise money-laundering. Moreover, the document bears a strong similarity in many respects to a large number of other purported contracts between third parties viz Vandry Investments Ltd ("Vandry"), Tarmilona Ltd ("Tarmilona") and Lamen Ltd ("Lamen") (the "VTL material") which, say the claimants, were produced by Ms Balk on previous occasions for the specific purpose of money-laundering. The VTL material was discovered by the Swiss prosecutor either in hard copy or on a USB stick in the Dunant safe deposit box. In total there are some 60 purported contracts with dates ranging from 2006 to 2010. I do not propose to identify all of them: a full list was attached as Schedule B of the claimants' closing submissions. It is important to note that the claimants accept that this material does not relate to any money-laundering in relation to the fraud proceeds in the present case but other quite separate money-laundering exercises. Nevertheless, they say that they are entitled to rely upon Ms Balk's involvement in the production of these purported 'contracts' and payments (totalling more than US$ 6m) as evidence going to her credibility and, more specifically, to show her significant previous connection to Tarmilona, one of the other recipients of the fraud proceeds; her ownership and control (with Mr Urumov) of both Lamen and Vandry; her past involvement (with Mr Urumov) in disguising the source and destination of money transfers, including by the use of shell companies and sham contracts; her knowledge that Mr Urumov engaged in such activity; her propensity to engage or assist in such activity; and, ultimately, her dishonest involvement in the Argentinean Warrants Fraud and the laundering of the fraud proceeds. In effect, the claimants seek to use this evidence as similar fact evidence.

381. This gave rise to some debate as to whether this material could be adduced in evidence and relied upon by the claimants for such purposes. In particular, Mr Peto submitted that the claimants could not rely upon the VTL material other than for credit/credibility purposes, on the basis that there had not been "*the usual kind of notice or disclosure*" such that Ms Balk "*was in a sense in the Mastermind chair …*". Thus, Mr Peto submitted, it would be unfair on Ms Balk to make findings on the allegations relating to the VTL material (to support findings on the ultimate issues against her in this case), because they had not been specifically pleaded and she had not had sufficient notice of them. Further, Mr Peto submitted that, if an issue upon which Ms Balk was cross-examined by the claimants went only to credit, then the claimants were "*bound by the answer*" and the court "*can't choose to disbelieve the answer*" (the supposed "rule of finality"). I do not accept these submissions for the reasons set out in a written note served by Mr Berry which may be summarised as follows.

382. Taking the latter point first, the rule of finality simply means that answers given in cross-examination going only to credit are generally regarded as final, in the sense that the cross-examining party may not then seek to contradict such answers by other evidence: see *Phipson*, *The Law of Evidence* (17th Ed.) §12-14. That party must 'accept' the answer in that sense, but neither such party nor the Court are bound to treat the answer as *true*. Cross-examination of a dishonest witness as to credit would

largely be meaningless if it did. The position was summarised by Mustill LJ in *The Filiatra Legacy* [1991] 2 Lloyd's Rep. 337, at pp. 357 (col 2) to 358 (col 1):

> "*We have used the word 'alleged' in relation to these incidents because no evidence was adduced by the plaintiffs as to the details of them, or indeed that they had ever happened. In fact, it is difficult to see how they could have called such evidence. Since this cross-examination went to credit, the appellants were obliged to accept his answers and could not call affirmative evidence of the matters put, unless they qualified as 'similar fact' evidence, which they did not in this case.*"

The starting point is therefore that it is at least open to the court to disbelieve Ms Balk's answers to questions about the VTL material, even if the evidence were only admissible as going to credit.

383. As to the more general point concerning the circumstances in which similar fact evidence may be adduced and relied upon, the relevant principles are to be found in *O'Brien v Chief Constable of South Wales Police* [2005] 2 AC 534 viz the Court will apply a two-stage test, asking first whether the evidence is potentially probative of a matter in issue; and if so, whether the trial Judge should exercise his discretion to admit it in the interests of justice, having regard to such matters as the balance between probative value and prejudicial effect, and whether it would be a disproportionate distraction from the matters directly in issue in the case. In *O'Brien*, the similar fact evidence appears to have been pleaded (or at least was proposed to be pleaded) – hence the issue of its admissibility arising at a CMC and Lord Bingham's comment (at §8) that "*while, for purposes of pleading and disclosure, it was desirable and perhaps necessary to obtain a proleptic ruling in principle on the admission of this evidence, the final say, in relation to any particular item of evidence, should rest with the trial Judge*". Mr Berry submitted that, on one analysis, it would be positively wrong to plead such matters of *evidence* since they are not the *material facts* necessary to prove the ingredients of the pleaded cause of action. I would not necessarily accept that submission; but I do accept that the authorities do not suggest that the admissibility of similar fact evidence necessarily depends on whether it has been expressly pleaded. For present purposes, I am content to accept that the position is as set out by Lord Denning MR in *Mood Music Publishing v. De Wolfe Ltd.* [1976] 1 Ch 119 at 127C-E (cited in *O'Brien* by Lord Philips (at para 47) and, with express approval, Lord Carswell (at para 72)):

> "*The criminal courts have been very careful not to admit such* [*similar fact*] *evidence unless its probative value is so strong that it should be received in the interests of justice: and its admission will not operate unfairly to the accused. In civil cases the courts have followed a similar line but have not been so chary of admitting it. In civil cases the courts will admit evidence of similar facts if it is logically probative, that is, if it is logically relevant in determining the matter which is in issue; provided that it is not oppressive or unfair to the other side; and also that the other side has fair notice of it and is able to deal with it.*"

So, provided the evidence is potentially probative of matters in issue, it is admissible as evidence tending to prove such matters provided the other side has had *fair notice* of it.

384. Applying those principles to the present case, it is my conclusion that the VTL material is probative of matters in issue. As to whether Mr Urumov and Ms Balk had fair notice of the claimants' intention to rely upon such material, Mr Berry's written note on this topic set out in considerable detail the relevant procedural steps and correspondence which had taken place between the parties. It is unnecessary to set this out in detail. For present purposes, it is sufficient for me to say that I have no doubt that fair notice was given to Mr Urumov and Ms Balk. For all these reasons, it is my conclusion that the claimants are entitled to rely upon the VTL material for the stated purposes.

385. So what does the VTL material show? In essence, Ms Balk's evidence is that with regard to Lamen, the documents in question were, in effect, all genuine consultancy agreements. However, she was unable to produce a single report, note, email or other document which could support such assertion; and, apart from a vague reference to some work she said she did for Heidelberg Cement and Barratt Homes, she was unable to recall any of the work which she said she had done with any specificity whatsoever. With regard to Vandry, her evidence was, in effect, that this was her father's company and that she must have put the relevant documents in the Dunant box by mistake. In my judgment, her evidence with regard to both Lamen and Vandry (and also Tarmilona) is a deliberate lie. These documents – both individually and collectively – bear all the hallmarks of having been created as part of a money-laundering exercise. If they were genuine consultancy agreements, they would have generated at least some further documents which Ms Balk would have been able to produce or at least recall in at least some detail which she was unable to do. In cross-examination, she sought to explain her inability to produce certain of these documents on the basis that she had put the reports on a memory stick which she posted to Tarmilona in Eastern Europe. In my judgment, that seems most improbable; but even if it were true, it does not explain her inability to produce copies from her own computer. It is simply not credible that all relevant documents that might support her evidence have apparently vanished into thin air.

386. Fourth, the suggestion that 42 Avenue Road was purchased as an investment by Dunant for Gemini is not consistent with the contemporary documents. As I have already stated, Dunant is a Panamanian company with bearer shares. According to Mr Urumov, he acquired it at Bordier's suggestion in order to separate his personal and business assets – although it seems to me that this explanation is (at best) inherently improbable (indeed highly improbable) because Mr Urumov already had various accounts in the names of Denning, Sun Rose, PUI), Tenway (and possibly others); and the Sun Rose account was entirely emptied into the Dunant Bordier account by mid-May 2011. In any event, the documents show that it was Ms Balk who organised their acquisition of Dunant through Mr Giovanna of Bordier. As submitted by Mr Berry, the obvious inference is that Dunant was probably established to better disguise the trail of the fraud proceeds: not only was it incorporated in a notoriously opaque jurisdiction, but its bearer shares meant that there was no corporate record of its beneficial ownership; and its only assets came from Sun Rose, which in turn were derived from cash deposits.

387. Mr Urumov says that he opened the Dunant Bordier account on 24 March 2011 and that he told Bordier at that time of his intention to buy a property in London. In fact, the account opening documentation makes it clear that he and Ms Balk were the joint beneficial owners of Dunant; and Bordier was apparently told that "*they want*[*ed*] *to purchase a property in London …*" It is noteworthy that there is no hint in those contemporary documents that this was supposedly for the purpose of an investment management project of the kind now alleged on behalf of Gemini or any other third party. Moreover, the documents show that the Urumovs gave Bordier a Moscow residential address, despite having lived in London for many years by that time; and that in response to a question about future potential payments envisaged on the account, the Urumovs told Bordier that they expected "*USD 20 millions re: the sale of the remaining shares of Uralpharm (inflow)*". As submitted by Mr Berry, it would seem that this was obviously an attempt to fob off Bordier (who might otherwise have been concerned at the large and speedy withdrawal); but most importantly it gives the lie to Mr Urumov's attempt to deny active involvement in the Ural Pharma cover story deployed to justify Arcutes' initial receipt of US$120 million (see above).

388. Fifth, it is also relevant to note that the Urumovs had formed an intention to purchase 42 Avenue Road well before they had acquired Dunant and opened its Bordier account. This appears from contemporaneous documents which the claimants obtained from the Urumovs' solicitors (Mishcon) by way of *Norwich Pharmacal* order dated 23 October 2012. That disclosure shows that the Urumovs had targeted that property by 11 March 2011, just as the Second Trade was being concluded. On 14 March, the documents show Mr Urumov describing it as "*yulia*[*'s*] *project*". By 16 March, the Urumovs had instructed Mishcon to offer £18m for the property. Mishcon described their clients not as Dunant but as the Urumovs personally. A draft sale contract for the property had been drawn up by 22 March 2011, showing the final price of £19m, and again this identified the purchasers as the Urumovs themselves, not Dunant. The documents show that Mr Urumov was apparently to be abroad from 27 March 2011 in Baku, Almaty and Kiev, so Mishcon drew up a general power of attorney in favour of Ms Balk to enable her to sign the necessary documents on his behalf. It is not clear when it was executed, but it was ultimately dated 28 March 2011 – with Mr Pinaev witnessing Mr Urumov's signature.

389. On 23 March 2011 (when a revised retainer letter had again identified the Urumovs personally as Mishcon's clients), Ms Balk first informed Mishcon that Dunant would be the purchaser of the property, noting that she would separately provide documentation regarding the origin of the funds. On any analysis, the Urumovs had clearly lied to Mishcon, telling them that "*you* [Yulia] *are funding this purchase initially entirely with your own cash resources…*"; and Mishcon appear to have been satisfied in this regard by a reference from Bordier dated 25 March 2011, stating that Dunant "*is well known to us as a client of our Bank since 2011 and we are fully satisfied with the source and origin of funds*".

390. Crucially, as submitted by Mr Berry, there is no mention anywhere in Mishcon's files that the purchase monies were to come from Gemini (or any other fund, institution or lender); nor that they were the proceeds of any loan; nor that the purchase was by way of an investment for a third party, or in the course of a business, or anything of that sort. In my view, these contemporary documents point very strongly in favour of the conclusion that contrary to the case which they now advance, the Urumovs had

truthfully told Mishcon that the property was to be their private residence, but lied about the real origins of the money. This is underlined by the fact that, after the sale had completed, they informed Mishcon (in the context of planning issues) that they were "*intending on installing a large mechanical umbrella in the garden of the property*", which "*will only be put up when they are entertaining friends …*"

391. Sixth, later events strongly suggest that 42 Avenue Road was not a genuine commercial investment by Dunant for Gemini. In particular, as I have already noted, the claimants obtained judgment in default against Dunant and obtained title to the property. If this represented a genuine investment of monies belonging to Gemini, why did Gemini not seek to intervene and assert such alleged interest? It beggars belief that Gemini would not have done so if this had been a genuine commercial investment on Gemini's behalf.

392. Moreover, it is important to note that by the time of the default judgment i.e. March 2012, the Urumovs say that they had in effect divested themselves of their interest in Dunant and 42 Avenue Road. In particular, the Urumovs assert that in August 2011, Mr Urumov's health had deteriorated and he wanted to cancel the Sun Rose IMA because he was concerned that he would be "*unable to perform the IMA satisfactorily*". Given that (i) the vast bulk of the monies had, on Mr Urumov's account of events, already been invested for Gemini by the purchase of 42 Avenue Road; (ii) Ms Balk was supposedly responsible for the redevelopment works; (iii) there was little other money left to 'invest' under the IMA, and no evidence that Mr Urumov had done any investing with it; and (iv) there is no objective evidence that Mr Urumov's health had in fact deteriorated, this assertion is, to say the least, lacking in credibility and difficult, if not impossible, to accept. In any event, Mr Urumov claims that in these circumstances, he spoke to Mr Churin of Gemini, who (i) agreed, despite it being Mr Urumov who wanted to cancel, that Mr Urumov was entitled to the £200,000 early cancellation fee (supposedly paid by Dunant to Balk's account in two payments on 11 and 18 August 2011, totalling US$329,000); and (ii) asked Mr Urumov, without any explanation, to pay US$ 200,000 from Dunant to Mr Kondratyuk's company, Firmly Oceans (which he did, on 19 August).

393. Mr Urumov then says that it was later agreed with Mr Churin (by telephone) that Mr Urumov should deliver the bearer shares in Dunant to a representative of Gemini; and that he did so in Barcelona on 20 or 21 August 2011 (the latter being the day before he met Mr Popkov in Lugano to discuss the warrants trades), allegedly handing over the shares in Dunant (worth some US$ 35m) to an unidentified individual in return for a copy of an agreement cancelling the IMA (the "Gemini Cancellation Document"), which was, according to Mr Urumov, already signed by Mr Churin and which he (Mr Urumov) counter-signed and gave to the representative. The Gemini Cancellation Document contains a number of features which are, to say the least extremely curious. In particular, it refers to "*Urumov's liability*", when it was supposedly <u>Sun Rose</u> who had incurred the liability under the Sun Rose IMA; it refers to a liability "*of US$40 million*", when Sun Rose had received just US$ 36.5m; it provides that Sun Rose would remain responsible for paying the "*operating expenses related to the investment assets of Dunant*" (clause (h)) – e.g. the utility bills for 42 Avenue Road; and bears a purported 'signature' of Churin that is a facsimile copy of that appearing on the Sun Rose IMA itself (but is different from that on the Ural Pharma SPA).

394. Thus, the case advanced on behalf of Mr Urumov (and also Ms Balk) is that, as from 20 or 21 August 2011, the beneficial and legal interest in and control over Dunant passed from him and Ms Balk to Gemini. However, (i) Gemini has expressly confirmed that it knows nothing of these supposed arrangements, and has no information concerning any agreement with Mr Urumov or Dunant; (ii) that it has and claims no interest whatsoever in Dunant or in 42 Avenue Road; (iii) the Urumovs have at all times remained as the stated beneficial owners of Dunant in the records of its Swiss bank, Bordier; and (iv) indeed, Mr Urumov himself travelled to Switzerland to access Dunant's safety deposit box on 10 October 2011, just after these proceedings were launched against him, and at a time when he now claims he no longer had any interest in (or rights in respect of) Dunant. Further, the contents of the box – as disclosed by the Geneva Prosecutor – comprised documents all relating to the Urumovs' affairs. The present position is that Dunant has no apparent owner or controller. Since January 2012, the company records appear to show that it has no registered agents or directors, as confirmed by the Panamanian agents in October 2012. As noted above, default judgment was entered in these proceedings on 1 March 2012. That judgment was entered by Flaux J following a hearing where Dunant was not represented although Mr Urumov was apparently represented by Counsel who opposed the application.

395. In my judgment, all of these points – both individually and collectively – serve further to confirm that the Sun Rose IMA is a fake or a sham (or both); that the monies received by Dunant and used to purchase 42 Avenue Road were, as the Urumovs well knew, fraud proceeds; that their evidence in this court that this was some genuine commercial investment made on behalf of Gemini is, as they well know, a deliberate lie; and that the overwhelming inference is that as the balloon was going up, the Urumovs decided to seek to disown their interest in Dunant and 42 Avenue Road in an effort to distance themselves from the frauds and traceable proceeds.

The other monies

396. As appears from Figure 6, from the remainder of their share of the fraud proceeds and the proceeds from the Sign-On Fraud, the Urumovs used *inter alia* £1.9m to purchase the property at 9 Ordnance Hill, London; and US$ 4.5m to fund Quantum Leap, Mr Urumov and Pinaev's Luxembourg hedge fund. In addition, Ms Balk received more than US$ 1.25m of the fraud proceeds in particular: US$ 328,976 from Dunant's Bordier account in August 2011; US$ 164,000 from Denning's Clariden Leu account in August 2011; £94,000 via Wallcote Investments and Evangelina Property Group; US$ 440,000 from Denning to an account at Clariden Leu in the name of her mother, Galina Balk, on 8 April 2011 (on Mr Urumov's instructions); and £200,000 (as €234,445) from Mr Pinaev's Hottinger account on 18 November 2011, which Mr Pinaev told his bank was a loan by him *to* Ms Balk, but which Ms Balk told her bank was the repayment of a loan by *her* to Mr Pinaev. All of these matters serve further to confirm my conclusions with regard to Mr Urumov's involvement in the Argentinean Warrants Fraud and that the Sun Rose IMA was a fake or a sham (or both).

Denning

397. As stated above the claim against Denning is for damages and/or equitable compensation in the sum of US$ 2,675,000 and/or an account on the basis of dishonest assistance, procuring breach of contract and/or knowing receipt. In the light

of my findings, I have no doubt that Denning received substantial amounts of the fraud proceeds from the Argentinean Warrants Fraud and that given that Denning was in effect the creature of Mr Urumov (and also Ms Balk), such monies are recoverable by OSL/OFC on the stated bases. The court is, in my judgment, entitled to "pierce the corporate veil" in these circumstances on the basis that Denning was plainly used by Mr Urumov and Ms Balk as a device or façade: see *Tractor AB v Smallbone (No 2)* [2001] 1 WLR 1177 at §23 per Sir Andrew Morritt V-C; *Petrodel Resources Ltd v Prest* [2013] 3 WLR 1. However, in preparing this Judgment, I have had considerable difficulty in identifying the relevant figure. The figure of US$ 2,675,000 would appear to be different from that stated in the claimants' closing submissions and different again from what appears in Figure 6. I very much hope that the appropriate figure can be agreed; but, if not, I will have to hear further submissions as to the quantum of the claim against Denning.

Ms Balk

398. As for Ms Balk, I strongly suspect that she was at least aware of and possibly even intimately involved in the Argentinean Warrants Fraud. The fact that she was directly involved in setting up both Sun Rose and Dunant shortly before the Argentinean Warrants Fraud, that she was a shareholder and beneficial owner of those companies and a joint signatory with Mr Urumov in respect of these companies' accounts all point strongly in favour of such a conclusion. However, in my judgment, there is not sufficient evidence to uphold the claimants' claims against her for dishonest assistance, procuring Mr Urumov's breach of contract or conspiracy in relation to the Argentinean Warrants Fraud itself. Thus, I reject these claims.

399. However, the obviously close relationship between Ms Balk and Mr Urumov, the facts stated in the previous paragraph and my other findings above (including with regard to the VTL material) all strongly support the remaining claims against Ms Balk.

400. Notwithstanding, the main thrust of Ms Balk's evidence – and the case advanced on her behalf – is that she was not aware that such monies were the proceeds of fraud. On the contrary, it is her evidence that Mr Urumov had told her – and she believed – that the money/assets in Sun Rose and Dunant were being managed on behalf of a client i.e. that it was not their own. In particular, her evidence is that at the beginning of March 2011, Mr Urumov told her that he was going to be entrusted with an investment to manage in the region of £ 23m (i.e. about US$ 36m); that he was a very well-known investment manager; that contrary to Mr Pinaev's evidence that being entrusted with this sort of money was every trader's "wet dream", the sum of £23m was not a significant sum when compared to the billions in the portfolio that he (Mr Urumov) was managing; that she knew that he would do the due diligence necessary or he could possibly do; that therefore she had no reasons to doubt that whatever decisions he had made were "proper and correct"; that he did not tell her and she did not ask who the investors were or where the money came from or how he came to have such a huge amount to invest; and that she did not ask him any questions at all about this investment because she trusted her husband.

401. I do not accept this evidence. Ms Balk is perhaps right to say that the sum of £23m was not significant compared to the total funds being traded by Mr Urumov at Knight or Otkritie. However, he had never been entrusted in a personal capacity by investors

with money to manage still less this huge amount of money (or at least there was no evidence to that effect). In such circumstances, the attempt by Ms Balk to suggest that this investment was not unusual is, in my judgment, disingenuous.

402. Further, in my judgment, most of the points concerning the use of the monies received by Sun Rose and/or Dunant referred to above in relation to Mr Urumov apply equally to Ms Balk. Indeed, in this context, I would particularly emphasise that Ms Balk appeared to me (like Mr Urumov) to be highly intelligent. As she herself emphasised in evidence, she has no less than three degrees from top European universities with a particular skill in real estate management and her own company, Evangelina Property Group. According to Ms Balk's own evidence, her role with regard to the investment monies was to identify the real estate asset and then manage the construction process and sale for which her company would receive a fee of 1% of the gross development cost of the project in addition to Mr Urumov's own fee. Given Ms Balk's intelligence, qualifications and self-asserted skills, it is not credible that, according to her own evidence, she did not know whether the investment monies were by way of a loan or not or whether there was a management agreement or not; that she had not seen any documentation; and that she therefore did not think there was any requirement to report proposals to the investor and did not know whether there was any requirement to make reports to the investors about the investment. In my judgment, these are matters which would be known – indeed be of the first importance – to anyone performing the role which Ms Balk said she performed if the investment were genuine.

403. Having regard to all these matters, it is my conclusion that Ms Balk did not honestly believe that the sums received by Sun Rose and/or Dunant represented a genuine commercial investment; that, on the contrary, she well knew that these monies were the proceeds of fraud or, at the very least, she must have been suspicious and deliberately chose not to inquire for fear of finding out the truth. On this basis, it is my conclusion that Ms Balk is liable to OSL/OFC by way of damages and/or equitable compensation for US$ 36,978,000 and/or an account on the basis of dishonest assistance and/or procuring breach of contract and/or knowing receipt.

<u>Part VIII: The Pinaev defendants</u>

Mr Pinaev

404. In light of my findings as set out above, my conclusions with regard to Mr Pinaev himself are broadly similar to those which I have set out above with regard to Mr Urumov viz:

i) Mr Pinaev made the fraudulent misrepresentations numbered 1, 2 and 3 as summarised in paragraph 38 above. Such fraudulent misrepresentations were relied upon by OSL in entering into the Second Trade and transferring the sum of US$ 213,468,750 thereby causing OSL loss in the sum of US$ 150,933,750. On this basis, Mr Pinaev is liable to OSL for damages in the tort of deceit and/or conspiracy for that sum.

ii) Mr Pinaev is also liable for such loss by way of damages and/or equitable compensation and/or an account on the basis of the breach of his own fiduciary

duty and/or dishonest assistance in Mr Urumov's and/or Mr Kondratyuk's breaches of their fiduciary duties.

iii) Mr Pinaev is also liable for knowing receipt in relation to the sum of US$ 120m received by Arcutes (alternatively, if it matters, the lesser sum received by Pleator) by way of damages and/or equitable compensation and/or an account. As in the case of Mr Urumov, the court is, in my judgment, entitled to "pierce the corporate veil" in these circumstances on the basis that these companies were plainly used by Mr Pinaev as a device or facade to conceal the true facts thereby avoiding or concealing his personal liability: see *Trustor AB v Smallbone (No 2)* [2001] 1 WLR 1177 at §23 per Sir Andrew Morritt V-C; *Petrodel Resources Ltd v Prest* [2013] 3 WLR 1.

For the avoidance of doubt, such liabilities are concurrent not cumulative.

405. In my view, as in the case of the Urumovs, these conclusions are fortified and reinforced not only by the events (as I have already summarised above) relating to the initial flow of monies from OSL to Adamant, from Adamant to Gemini/Snoras, from Gemini/Snoras to Arcutes and ultimately the sum of US$ 36,978,000 from Arcutes to Mr Pinaev's company, Pleator, but also by what happened to such monies thereafter. Such events are also relevant to the independent claims advanced by the claimants against Pleator itself, Rossmore and Ms Kovarska.

406. The flow of funds concerning Mr Pinaev's share of the proceeds is summarised in Figure 7. In essence, Mr Pinaev's evidence concerning the receipt of monies from Gemini via Arcutes is similar to that of the Urumovs i.e. that the monies were received under the terms of an IMA ie. the Pleator IMA (which I have already referred to above) for the purpose of commercial investment on behalf of Gemini; that, as in the case of the Urumovs, a substantial part of these monies was used by Mr Pinaev and Ms Kovarska (the "Pinaevs") to purchase a property, the "Conches Villa" (this time in Geneva), which, the Pinaevs say, was for investment purposes effectively on behalf of Gemini; and that the bulk of the remainder of the monies was invested for commercial purposes, effectively on behalf of Gemini, in the purchase of various assets and by way of investment in or the making of loans to third-parties.

407. In summary, it is the claimants' case that, in truth, none of this expenditure was for investment purposes on behalf of Gemini but, on the contrary, was for the benefit of the Pinaevs themselves. In particular, the claimants say that the Conches Villa was purchased for the Pinaevs' own family use; that the other monies received by Pleator were used for purposes unrelated to any genuine commercial investment including to indulge Mr Pinaev's taste in expensive cars, spending more than US$ 1m on two Ferraris; and that the suggested "investments" or "loans" are, in fact, fakes or shams or both. As to the latter, it is noteworthy that the Pinaevs entirely failed – at least initially – to disclose their existence despite their obligations to do so under the freezing orders. When questioned in correspondence about the outbound payments to various entities (such as Haymoks, Mauchline, Calorna, Dalberg etc., described further below) shown on other disclosed documents, the claimants say that vague and implausible stories began to emerge. The Pinaevs then refused to provide copies of the supposed 'loan' agreements, citing supposed concerns about confidentiality. It was only when the claimants issued an application for disclosure of the agreements and related documentation that the Pinaevs eventually consented to an order for

production made by Walker J dated 18 July 2012. Since then, further 'versions' of various agreements have emerged to meet what the claimants say are the exigencies of the Pinaevs' developing case which, say the claimants, are all fakes. I deal with these briefly in turn below.

408. As appears from Figure 7, and in contrast to the Urumovs, a substantial part of the sum of approximately US$ 37m received by Pleator had not been used or disposed of when the frauds were discovered in August 2011. In summary, it is the claimants' case that in early October 2011, upon learning that the claimants had begun legal proceedings (initially against Mr Urumov alone), the Pinaevs set about desperately trying to convert the fraud proceeds into portable and/or untraceable form – in the shape of CHF 500,000 in cash, a banker's draft for a further CHF 2m, and three diamond rings worth US$ 4m – and promptly fled to Israel where they assumed new names; and that they also made arrangements to 'park' more than US$ 5m of the fraud proceeds with friends, mainly by wire transfers to Latvia (from where Ms Kovarska originates), pursuant to what the claimants say are obviously fake 'loan' agreements.

409. So far as the Pleator IMA is concerned, I have already concluded that, like the Sun Rose IMA, it is a fake or a sham or both. However, whereas Mr Urumov alleges that the Sun Rose IMA was "*cancelled*" pursuant to the (fake) Gemini Cancellation Document, Mr Pinaev says that the Pleator IMA was subsequently the subject of (i) an "*Agreement on Delegation of Duty*" dated 10 October 2011 (the "Pleator Delegation Agreement"), by which Pleator (belatedly) undertook Arcutes' obligations under the Gemini-Arcutes Loan Agreement, despite the fact that as Mr Pinaev well knew, Arcutes had long been dissolved; and (ii) a "*Supplementary Agreement*" to the Pleator Delegation Agreement, also dated 10 October 2011 (the "Pleator Supplementary Agreement"), by which Gemini supposedly acknowledged part re-payment of the Gemini-Arcutes Loan in the sum of US$ 4m (rather less than the actual value of the cash and diamonds) – although Mr Pinaev now claims that the cash and diamonds were only handed over on 14 October.

410. It is impossible and in my view unnecessary to deal with each and every item of expenditure as shown diagrammatically in Figure 7. For present purposes, I propose to focus on the major items of expenditure in respect of the amounts received by Pleator below – so far as possible broadly in chronological order. In my judgment, this exercise further undermines the assertion that such expenditure was, in effect, by way of investment on behalf of Gemini.

Transfer to Rossmore

411. On 21 March 2011 (i.e. on the same day as the first tranche of US$ 20m was received into the Pleator Bordier account) approximately US$ 6m was immediately transferred out to Mr Pinaev's other company, Rossmore. There is no satisfactory explanation for such transfer. In the following months, much of that money was "spent" as summarised in Figure 7.3. Of that sum, the largest amount (i.e. some US$ 4.5m) was transferred out about a week later i.e. on 29 March 2011 to Quantum Leap. There are no reliable contemporaneous documents to show that this – nor any of the other payments out shown on Figure 7.3 – was intended as an investment for Gemini; and such information as there is strongly suggests the contrary.

The Ferraris

412. Mr Pinaev admits that he used part of the monies received by Pleator to buy two Ferraris viz (i) shortly after receipt of those monies, a vintage Ferrari 275 on which he admits spending US$ 1.36m or US$ 1.66m; and (ii) later on about 18 August 2011, a cheaper Ferrari 550 which he purchased for £45,000. In effect, his evidence is that that these were an 'investment' for Gemini. I do not accept that evidence. Quite apart from my conclusion that the Pleator IMA is a fake or a sham or both, it is, in my view, implausible (at best) that he could seriously have believed that this was an appropriate investment for a genuine fund; and there are no contemporaneous records (as one would expect) if what Mr Pinaev says were true.

The Conches Villa

413. In May 2011, the Pinaevs purchased (in Ms Kovarska's name) a large house at 194 Route de Florissant, Conches, Geneva (the "Conches Villa") for CHF 20.4m (about US$ 24m) using in part (about US$ 17.5m) the money received from Gemini via Arcutes and Pleator. The balance was funded by a mortgage loan against the property from Julius Baer bank. The Pinaevs then spent more than US$ 1m on building and refurbishment work which apparently commenced in July 2011. In summary, it is their case that the Conches Villa was acquired for "*development and investment*" on behalf of Gemini. Analogously with the Urumovs, their evidence is that Mr Pinaev chose to make a commercial investment of most of Gemini's money on Gemini's behalf in that sector of his home town (Geneva) residential property market where families like his like to live, under the commercial management and direction of his wife; that Ms Kovarska was a skilled property developer and that her efforts to create a beautiful family home (for which purpose she even flew to Cuba to buy antiques) were undertaken for the purpose of commercial investment effectively on behalf of Gemini in order to sell it to a third party for a quick profit.

414. In particular, as summarised by Mr Peto, the evidence of Ms Kovarska is that in late March or April 2011, she was informed by Mr Pinaev that he would have a large sum of money to invest on behalf of a third party; that he told her that he would be investing in a range of assets but wished in particular to put a large portion of the loan into a high-end property in Geneva; that this type of investment made sense given the uncertainties of the global economy around this time; that Ms Kovarska was to be entrusted with the job of researching a suitable property, and then overseeing its refurbishment and decoration because of her successful experience of property development with regard to the couple's own Spanish property; that the Conches Villa was purchased in her name because the Pinaevs had been advised by their Swiss lawyer that this would enable compliance with the Swiss *lex Kohler* (on the basis that Ms Kovarska is an EU citizen); that that advice had been followed in regard to the purchase of Ms Kovarska's property at Chemin du Pommier, Geneva; and that specific advice was again sought when the question of the Conches development arose.

415. In effect, Mr Peto submitted that Ms Kovarska was entitled to and did honestly believe what her husband told her viz that he held those funds *on behalf of an investor* and that consequently they would have to be repaid i.e. no beneficial ownership in them vested with either herself or Mr Pinaev; that the documents put before Ms Kovarska by Mr Pinaev and her lawyer were consistent with that purpose; and that

even if Ms Kovarska is to be criticised for simply believing her husband's word (and she should not be), she was certainly entitled to trust the bona fides of the arrangement by virtue of her lawyer's involvement; that she always viewed the Conches property as a development to be sold and the proceeds to be handed back to the investor; that quite contrary to the (peculiar) suggestion that Ms Kovarska did not care about the spending on Conches because it was her own money, she was highly diligent in the way she set about the project; and had a clear end-date in mind for the realisation of profit; and that regardless of the position of Mr Pinaev, there can therefore be no question of a claim in dishonest assistance or knowing receipt being made out against her.

416. I do not accept this story advanced by Mr Pinaev and Ms Kovarska. In my judgment, it is a complete fabrication for the following reasons.

417. First, so far at least as Mr Pinaev is concerned:

i) It is important to bear in mind (again) the nature and timing of the suggested investment by Gemini i.e. within days of Gemini/Snoras receiving what is, on any view, a huge sum constituting the proceeds of fraud, Gemini decides to pay back some 80% of it to Arcutes including some US$ 37m for commercial investment by Mr Pinaev. This is on the basis, says Mr Pinaev, that he was not involved in the fraud. In my judgment, that suggestion is (again) totalling lacking in credibility.

ii) As I have already concluded, the Pleator IMA is a fake or a sham or both. It bears all the hallmarks of a document designed to disguise money-laundering.

iii) According to Mr Pinaev, he considered that the best way to invest his share of the Gemini 'loan' monies was to put a substantial proportion of it into the residential property market where families like his like to live (ie. Geneva), under the commercial management and direction of his wife. On its face, as in the case of the Urumovs, that seems difficult to accept: as it seems to me, no sensible investment manager would put such a large proportion of his client's eggs in one basket in this way, especially if the investment monies had really been advanced pursuant to an agreement that could be terminated by the lender with just a week's notice. Further, on the assumption that this suggested investment on behalf of Gemini was genuine, one would inevitably expect to see some record of its acceptance as well as some kind of evaluation, recommendation, analysis, presentation, review, monitoring and reporting of this 'investment', as required by clause 1 of the purported Pleator IMA. However, as in the case of 42 Avenue Road, there is no documentary record of this kind – or of any kind – at all.

418. In my judgment, this last point also totally undermines the evidence of Ms Kovarska - in particular, given the fact that (i) she was obviously highly intelligent with considerable experience in banking; and (ii) she was, on her own evidence, "in charge of development" although she did not know whether Mr Pinaev had told this to the investor. In cross-examination, she said that she "understood" that Mr Pinaev had received a "loan"; that she did not know the exact number when he first told her about it in the end of March; that he told her a little later that he had received around US$ 36m from a "big investment fund" which had bought or was going to buy Saab or

another big motor company; and that Mr Kondratyuk (who knew "someone very close") had "organised" the loan. Initially, she said in evidence that Mr Pinaev had not told her the name of the fund although she then admitted that he did tell her the name of the fund (i.e. Gemini) some time later. In my judgment, her evidence in this context (like that of Mr Pinaev) was particularly unsatisfactory and lacking in credibility if the purchase of the Conches Villa was indeed a genuine commercial investment on behalf of Gemini or some other third party.

419. Second, the evidence with regard to refurbishment costs was, in my judgment, also unsatisfactory and totally lacking in credibility. For example, Ms Kovarska's evidence was that she had not drawn up a written account for the investor of everything that she had spent although she said she had an "account for myself" which was also available for Mr Pinaev. Further, Ms Kovarska's evidence was that the estimate for the development was CHF 1.3m – and that this was the amount actually spent. However, the information which she gave to this Court pursuant to an earlier order of Cooke J was that the development costs were approximately CHF 2m. In cross-examination, she said that the latter was a "mistake" because she was in a "hurry" when she prepared the statement for the court – although I find that explanation difficult to accept. Further, the fact that she went to Cuba to buy antiques for the Conches Villa and that such trip was not (as she accepted) charged to the investor is difficult, if not impossible, to reconcile with this being a genuine commercial investment for a third party notwithstanding Ms Kovarksa's explanation that they were buying for a residential property and that it was up to the client to decide if he liked the antiques or not. In my judgment, all these matters are inconsistent with or, at the very least, tend very strongly to undermine the suggestion that this was a genuine commercial investment on behalf of a third party investor or that Ms Kovarska honestly believed that it was.

420. Third, there is other independent evidence which is inconsistent with the case now advanced by the Pinaevs. In particular: (i) the Pinaevs' private banker (Mr Giovanna of Bordier) gave evidence in Switzerland that he was shown around the house by his clients, in the presence of their architect (Patrick Schwarz), and that the "*villa's purpose was clearly to serve as a home for the PINAEV family*"; and (ii) the man in charge of the building work (Wahid Kamel of Renov & Gestion S.A. in Geneva) has also given evidence in Geneva, confirming that "*the redevelopments essentially consisted of changing the layout of certain parts so that they could be occupied by the new owners' children and* [*parents-in-law*]" and that the Pinaevs planned to move in for Christmas 2011 (and indeed Mr Kamel himself helped them to move some of their personal effects into the property). Mr Peto rightly points out that these individuals did not give live evidence. He submitted that had they given live evidence and been cross-examined, it would have been possible to expose their evidence that the Pinaevs intended to live in Conches as baseless and/or vindictive speculation; and that, in effect, it is of little, if any, weight when compared to the evidence of Mr Pinaev and Ms Kovarska who both gave "live" evidence. I accept that the fact that this evidence of Mr Giovanna and Mr Kamel was not given "live" and not tested in cross-examination renders it less satisfactory than might otherwise be the case. However, I see no particular reason why the evidence of these individuals would or even might be unreliable; and although such evidence on its own is, of course, not determinative, it seems to me to carry at least some weight to be considered with all the other evidence.

421. Fourth, at the signing of the *acte de vente* (the formal deed of sale) on 20 May 2011 in front of the Swiss notary conducting the sale, Ms Kovarska formally certified that she was "*not acting on behalf of any persons having their residence or registered office abroad*"; and that "*her future acquisition is not, and shall not be financed by persons having their residence or registered office abroad to an extent that exceeds the normal rules in civil and commercial matters*". As submitted by Mr Berry, these statements are flatly inconsistent with her present assertion that the monies came from a genuine third-party fund, on whose behalf this was a true investment. In evidence, Ms Kovarska accepted that these statements were untrue and that she had lied to the Swiss notary. However, her explanation for this was that she had lied to the Swiss notary in order to circumvent local regulations i.e. although she was permitted as a local resident to buy property in the canton, such purchase was prohibited if made by or on behalf of a non-resident third party. I accept that that is or at least may be true, but, at the very least, this shows that, on her own evidence, Ms Kovarska is both dishonest and a liar. Rather, given all the other evidence, it seems to me that the overwhelming likelihood is that what Ms Kovarska told the Swiss notary was true; and in that case, this shows that Ms Kovarska was dishonest and a liar in what she told the court.

422. Fifth, the Pinaevs' evidence as to the funding of the purchase is also inconsistent and it is clear that they prepared fake or sham documentation. Thus, when giving disclosure under the freezing orders, Mr Pinaev said that "*sums totalling CHF15.224m were paid by way of loan and gift by Pleator and/or Pinaev to* [*Kovarska*] *to fund part payment of her purchase of the house*". The Pinaevs' solicitors then disclosed certain unsigned agreements between Mr Pinaev and Ms Kovarska suggesting that Mr Pinaev paid just over CHF 13m viz CHF 5.25m by way of loan (the "Conches Loan Agreement") and CHF 7.8m by way of "*an immediate and unconditional gift*" (the "Conches Gift Agreement"). However, in Ms Kovarska's subsequent asset disclosure, she claimed to have borrowed CHF 7.4m (not CHF 5.25m); and to have been given CHF 6.9m (not CHF 7.8m) "*with the reservation of repayment*" (i.e. not unconditionally). There is no document recording any such "*reservation*", which Kovarska now describes as a "*repayable gift*". As submitted by Mr Berry, it seems to me that this is an obvious attempt to reconcile the evidence with their story that the purchase was an investment on behalf of Gemini. When asked about the difference between the stated amounts of the "loan", the Pinaevs' solicitors merely noted that "*the balance of the loan is not documented*".

423. On any analysis, as submitted by Mr Berry, it seems to me that the Conches Loan and Gift Agreements are further sham documents used by the Pinaevs to perpetrate a deception. Thus, the Conches Gift Agreement falsely states that the CHF 7.8m monies derive from "*assets PINAEV earned before* 2008". Even on their own present case, this is untrue. Further, as also submitted by Mr Berry, it seems likely that the funding was clearly structured in this way so as to give the false impression to the Swiss notary that the purchase complied with the *lex Kohler*, the Swiss law by which Ms Kovarska (as an EU citizen) was entitled to purchase Swiss property provided that at least one-third of the purchase price came from her own funds (hence the supposedly "*unconditional*" gift). However, the Pinaevs now have to claim that this "gift" was repayable (hence, it was really finance and not a gift at all) in order to explain how it could possibly sit with the supposed 'investment' on behalf of Gemini. As submitted by Mr Berry, it would seem that the purchase was therefore unlawful under the *lex*

Kohler, and the documents must have been intended to support Ms Kovarska's misrepresentation of the position to the Swiss notary.

Delsga International Corporation ("Delsga")

424. On 8 August 2011, Mr Pinaev caused Pleator to transfer US$ 4m to an account in the name of Delsga. Delsga is a Panamanian company nominally owned by Mr Pinaev's father but actually used by him (Mr Pinaev) to trade his own investments pursuant to a power of attorney. That account had been opened on 21 December 2010 but had lain empty and dormant until 8 August 2011 i.e. when it received the US$ 4m from Pleator. This was of course, just after the onward sale of the warrants to Threadneedle had collapsed (and Mr Gersamia had fled from Threadneedle's offices); and on the very day that Mr Urumov supposedly dismissed Mr Pinaev from Otkritie. The monies were subsequently returned to Pleator in tranches, starting with US$ 2.9m on 31 August 2011 and ending with several transfers on 4 to 6 October 2011, just as (i) proceedings were launched against Mr Urumov and (ii) Mr Pinaev was opening an account at Bordier for a further newly-incorporated BVI vehicle called Molly Properties Corp ("Molly Properties"). Molly Properties was in fact nominally owned by an entity called "RMML Trust" (obviously named after the Pinaevs and their daughters: **R**uslan, **M**arija, **M**ia and **L**ea). RMML Trust, which had Liberian trustees, had been established by the Pinaevs with the assistance of Caversham S.A., a trust company in Geneva.

425. According to Mr Pinaev, the Delsga account was used "*to buy and sell stocks and shares*". However, this appears to be untrue and no (satisfactory) explanation has been given with regard to this transfer and retransfer of monies which, on Mr Pinaev's evidence, had been entrusted to Pleator as part of the investment for Gemini. Again, quite apart from my conclusion that the Pleator IMA is a fake or a sham or both, it seems to me implausible (at best) that the movement of these monies formed part of a genuine investment strategy for Gemini. Rather, as submitted by Mr Berry and given in particular the timing of the original transfer, it seems to me that the pattern of movements on Delsga's account at Bordier bear all of the hallmarks of a classic money-laundering 'transit' account; and that the overwhelming likelihood is that the original transfer was part of the Pinaevs' plan to empty the contents of the Pleator and Delsga accounts at Bordier into Molly Properties and the RMML Trust, but their urgent need to move all of their assets out of Bordier when the balloon went up in early October 2011 intervened.

Mauchline

426. On 13 September 2011, €1.25m was paid from Pleator to an account at Raiffeisenbank in Prague in the name of Mauchline Ltd ("Mauchline"). Mauchline appears to have no genuine business. It files "dormant company" accounts. The accounts of Mauchline show no business and no trace of any such loan. Mauchline is another company with opaque ownership. In particular, it is an English company whose original director was Panamanian; it is wholly owned by a Scottish entity called Arran Business Services Ltd ("Arran"); Arran's sole director is none other than Mr Shavlov (Mr Pinaev's trusted acquaintance who supposedly introduced him to Haymoks), who was represented to Companies House as being usually resident in Scotland; and Arran is in turn owned by Offshore Legal Solutions S.A.

427. It is said by the Pinaevs that this was a genuine loan made pursuant to a written agreement dated 14 September 2011 (the "Mauchline Agreement") but, as submitted by Mr Berry, this is an obvious fake or sham or both for the following (among other) reasons:

i) On 28 March 2012, the Pinaevs' then solicitors (Cartier & Co) informed Hogan Lovells that Mauchline was not owned by "*anyone associated with our client*". However, Mr Pinaev's initial instruction to Bordier (on 12 September 2011, thus predating by two days the Mauchline Agreement) was for a transfer "*as a loan to his friend, Eduard Slobins*", as opposed to a commercial loan.

ii) Mr Pinaev now claims that due diligence was carried out in the form of internet searches and obtaining financial information in respect of the Riga Commercial Port. The implication appears to be that this was some sort of genuine investment; and indeed, Mr Pinaev's evidence when cross-examined as to his assets was that this was a commercial investment under the Gemini-Arcutes Loan Agreement and the Pleator IMA. But the former confined the use of funds to investment in share of hedge funds which this was not. The supposed Pleator IMA, while permitting wider classes of investment, called for written proposals and reporting but there was none (although Mr Pinaev now claims to have satisfied his reporting obligations by mentioning this 'loan' to Mr Kondratyuk). No due diligence documents relating to the Mauchline Agreement have been produced pursuant to Walker J's Order.

iii) There are no documents showing any negotiation. There was no security for Pleator (even though the loan agreement expressly envisaged Mr Slobins having taken security from someone else: see cl. 1.6.1). Mr Pinaev's recent explanation of the "purpose" – funding an unnamed politician's election campaign – is suspicious, uncommercial, and conveniently devoid of any details that might permit independent verification. Mr Pinaev has refused to provide the claimants with the name of the politician in question.

iv) On any view, Mr Pinaev told lies to Bordier about the purpose of the "loan". It was not for the acquisition of shares in the Riga Commercial Port.

v) Mr Pinaev also lied about the document. He said at first that he did not have a copy, but that Bordier did, because he sent it by email to them. Bordier, however, deny having a copy. Mr Pinaev then adjusted his evidence to explain Bordier's denial by saying that he had sent it to Mr Giovanna's personal Yahoo! Account which seems, on its face, unlikely. He then produced a loan agreement (without the supposed covering email) from his own files in electronic disclosure.

vi) The "loan" is well overdue on its own terms, and promises of repayment have been made, but not kept. Recently Farrers have received €300,000 said to represent part repayment of the loan, but these repayments dried up when the Pinaevs were forced to concede that they could no longer use their disclosed properties to fund their legal costs (see the Order of HHJ Mackie QC dated 22 March 2013). That sum does not even cover all of the contractual and default interest under the purported terms of the loan, let alone reduce the outstanding principal. The remittances were not by Mauchline, as would be the case if

there were a genuine loan, but by Dalberg, said to be another company owned by Mr Slobins and the recipient of further sums.

428. In light of all the above, Mr Berry submitted that the inevitable conclusion is that Mauchline is a shell company, with no real activity, used as a means of removing funds beyond the reach of the claimants; and that the loan agreement was fabricated to create the false impression that there was a commercial context for the transfer. I agree. In particular, it is my conclusion that the transfer to Mauchline is inconsistent with the monies received into the Pleator account being a genuine commercial investment for Gemini or any third party.

The events in October 2011

429. On Wednesday 5 October 2011, the Court made a freezing order against Mr Urumov in respect of the alleged Sign-On Fraud. This was sealed and served on Mr Urumov the following day. On Friday 7 October, Mr Urumov met Mr Pinaev in London, before they flew together the next day to meet Mr Kondratyuk in Switzerland.

430. As submitted by Mr Berry, it seems to me that over the next few days, the Pinaevs resolved to flee from Switzerland to Israel, after spending the coming week (10 to 14 October) desperately trying to convert the balance of the fraud proceeds into portable and liquid assets or to park them in 'safer' locations. In particular, Mr Pinaev told their private banker at Bordier (Mr Giovanna) at this stage that he "*wished to take back the entirety of his assets and take his business elsewhere*"; and on 10 October, Mr Pinaev and Mr Meleshko (the Pinaevs' Swiss/Russian lawyer and a paid introducer of clients to Bordier) asked Bordier to close his account and give him the balance in cash. (Mr Kondratyuk did the same at around the same time; whilst also on 10 October, Mr Urumov visited his safety deposit box held by Dunant, the company he claims to have transferred to Gemini three months earlier: see above.) In fact, Bordier was not prepared to allow the Pinaevs to withdraw all of the money as cash, but ultimately M Grégoire Bordier agreed with Mr Meleshko that the Pinaevs could move half of their assets to other banks, provided the other 50% remained at Bordier. According to Mr Meleshko, M Grégoire Bordier achieved this compromise by threatening to file a money laundering notification against Mr Pinaev if he tried to withdraw more than 50% of his assets. As it turned out, however, Mr Pinaev circumvented this agreement by using the monies to make retail purchases of diamond rings and lying about further wire transfers being to companies he owned. In particular, on Monday 10 October Mr Pinaev opened a new account at a different private bank in Geneva – Hottinger & Cie – over which Ms Kovarska was granted power of attorney. The following day, Tuesday 11 October, Mr Pinaev went to a luxury jewellery boutique in Geneva called Chatila SA, and bought a 10-carat diamond ring for CHF 1,501,500 (approximately US$ 1.67m). He faxed a payment instruction to Bordier from the shop itself. Mr Pinaev's evidence at first was that he went back to Chatila on Thursday 13 October to pick up that ring, and to purchase two more, this time with pink and yellow diamonds, costing another CHF 1,796,500 (approximately US$ 2m). This time, Ms Kovarska joined him. It was three days before her birthday, but Mr Pinaev has asserted that none of the rings he bought were worn by Ms Kovarska "*at any time*" – although he now admits that she acceded to M. Chatila's invitation to try rings on. For her part, Ms Kovarska has a surprisingly hazy memory of whether she tried on any of this impressive jewellery or what happened to it thereafter. Later the same day (Thursday 13 October), Mr Pinaev visited Bordier

(which is near Chatila in Geneva) and withdrew CHF 500,000 in cash; and obtained a banker's draft for another CHF 2m, each from the Gemini monies in the Pleator account. This could well have been the occasion upon which an employee of Bordier (a Camille Bordier) noticed Ms Kovarska was wearing a "*very large diamond ring*".

431. With regard to these events, it is Mr Pinaev's evidence that the money which he spent (i.e. almost US$ 4m) on diamonds was part of an investment strategy on behalf of Gemini because he "*became worried in early October 2011 about the Eurozone monetary policy and the possibility of the collapse of the Eurozone*". I do not accept that evidence. Again, it seems to me a deliberate lie. In particular, at that time, most of the money was held in US$ and CHF; and on the day between his visits to buy the diamonds, he actually instructed Bordier to sell the US$ and <u>buy</u> Euros (acquiring some €1.1m from money in his US$ and CHF accounts). Further, Mr Pinaev claims that he embarked on this investment strategy on Gemini's behalf, by buying diamonds mounted in rings from a retail boutique on one of Geneva's most exclusive shopping streets. He therefore paid the equivalent of VAT and (no doubt) a hefty retail premium, including the cost for the mounting of the diamonds themselves. Mr Pinaev's recent explanation was that it is illegal to buy loose, unmounted diamonds in a Swiss shop – although Mr Berry submitted that this was untrue. In any event, it seems to me that this course of expenditure is inconsistent with such funds forming part of a genuine commercial investment on behalf of a third party. In summary, it is my conclusion that, as submitted by Mr Berry, the truth is that the rings were intended to be easily portable for the journey to Tel Aviv – where one of the world's biggest diamond markets happens to be located and diamonds can be recut, resold and disappear for a small additional cost.

432. As further submitted by Mr Berry, this conclusion is reinforced by at least three additional points.

433. First, Mr Pinaev claims that he converted almost US$ 4m of the Gemini 'loan' monies, sitting as cash in his bank accounts, into diamonds just a day or two *after* Mr Kondratyuk had supposedly told him that Gemini wanted the loan to be repaid early. This is illogical.

434. Second, Mr Pinaev claims that just after he had acquired the diamonds, Mr Kondratyuk's attitude suddenly changed and, in the evening of Thursday 13 October, he (Mr Kondratyuk) informed him (Mr Pinaev) that Gemini required full repayment immediately; and therefore that on 14 October, he handed over the diamonds and CHF 500,000 in cash (together worth more than US$ 4.25m) in return for a "*receipt*" acknowledging the repayment of just US$ 4m (now said to be the Pleator Delegation and Supplementary Agreements, which are dated 10 October 2011). This story is a recent invention which I do not accept. As submitted by Mr Berry, the idea that a *bona fide* investment fund would wish, or even be prepared, to be re-paid in cash and jewellery (or that Mr Pinaev believed that it would) is inherently incredible, even without considering the facts that such 'repayment' is credibly denied by both Mr Kondratyuk and Gemini as well as what the claimants say are (i) the many holes and inconsistencies in the Pinaevs' story (some of which were drawn out when they were cross-examined as to their assets in January and February 2013); and (ii) the obvious fakery of the documents deployed to support such case.

435. As submitted by Mr Berry, it seems to me that the obvious truth is that, in the week of 10 October, to the extent possible, in the face of Bordier's refusal to let Mr Pinaev take all of his assets in cash, the Pinaevs turned the Bordier bank accounts into portable assets, including the diamonds, CHF 500,000 in cash and a CHF 2m bankers' draft, and fled with them. They were clearly desperate to empty the accounts into which they knew the claimants would be able to trace the proceeds of the frauds. In particular, as submitted by Mr Berry, the Pinaevs' account turns on their having taken the second and third diamond rings with them out of Chatila on 13 October, and having them in the safe in Ms Kovarska's Chemin du Pommier apartment overnight from 13 to 14 October. However, they clearly did not do so. In particular: (a) in her asset cross-examination, Ms Kovarska would not support the story that Mr Pinaev left Chatila with the two diamond rings worth CHF 1.8m on 13 October, and it is not credible that she would not have known, or would have forgotten, if he had done so; and (b) Bordier did not act on any payment instructions before Friday 14 October (and even then paid only with value date of Monday 17 October). It is not credible that Chatila would release the diamonds before receiving payment of so large a sum as CHF 1.8m. Confronted by Chatila's own evidence, and presumably recognising the force of the above points, Mr Pinaev changed his evidence asserting that the funds for the purchase of the second and third diamonds "*would certainly have been received before 9am on 14 October 2011*" and that he must have "*confused the precise timing of collection*" such that "*it must be that I visited* [Chatila] *on the morning of 14 October 2011*" (*ibid*). As submitted by Mr Berry, this would seem to be a recent invention to try to fit his evidence to the emerging facts, which reveal his early sworn testimony to be untrue.

436. Third, as submitted by Mr Berry, it is my view that Mr Pinaev's evidence about the supposed receipt(s) for the 'repayment' under the Gemini-Arcutes Loan Agreement is internally inconsistent and not credible. A proper receipt is an obvious prerequisite for any commercial repayment transaction. There are, however, various different, inconsistent and suspicious versions of the Pleator Delegation and Supplementary Agreements (or parts of them), which are now said by Pinaev to have amounted to "*a receipt*". As to these:

i) The date on each version, 10 October, is wrong on any hypothesis: no 'repayment' was made on that date.

ii) The figures for the amount of the loan outstanding (variously, US$ 36.5m or US$ 40m before repayment, and US$ 32.5 or US$ 37.5m after repayment) are all wrong. Given Pleator's supposed immediate 'right' to a fee of US$ 2m, the correct figure, if the story is true, before the repayment of 14 October, would have been at most US$ 34.5m and perhaps US$ 34.2m, if earlier alleged repayments are taken into account.

iii) The figures for the amount repaid (variously US$ 4m and US$ 2.5m) are all wrong. The correct figure, if the story is true, would have been at least US$ 4.25m, and perhaps US$ 4.5m if supposed earlier repayments are taken into account. Indeed, Mr Pinaev's own evidence is that he repaid around US$ 5m: US$ 200,000 to Firmly Oceans on 18 August 2011, US$ 110,000 to Dunant on 5 October 2011, and US$ 4.68m to Kondratyuk on 14 October.

iv) Mr Pinaev's suggestion that the wrong figures appeared in one version of the Pleator Delegation Agreement because it was an early, incorrect draft handed to him by Mr Kondratyuk on 8 October (but still dated 10 October) is inconsistent with his written statement, that he asked for a receipt on 10 October and Kondratyuk agreed he "*would arrange*".

The Haymoks transfers

437. Meanwhile, on Thursday 13 October, i.e. the very day that the Pinaevs were buying diamonds at Chatila and withdrawing CHF 2.5m in cash and by banker's draft from Bordier, they also arranged for a total of €1.45m to be transferred from Pleator in two tranches to an entity called Haymoks Trend LLP ("Haymoks"). The money was paid on the instructions of Ms Kovarska as contained in an email which she forwarded to Bordier. It is my conclusion that she deliberately tampered with the incoming email that she forwarded to Bordier in order to conceal the identity of the instructor; and that her evidence that she could not remember doing that was deliberately false.

438. Initially, Mr Pinaev was apparently unable to recall the purpose of the payments to Haymoks. His former solicitors responded to a question about the purpose of the payments by saying that he was "*checking the position*". Later, his solicitors explained that the payments were "loans" and that Mr Pinaev had no interest in Haymoks. I do not accept that explanation for the following reasons.

439. First, Haymoks is a Northern Irish LLP with opaque ownership: its partners are a Belize and a Panamanian company. It does not appear to have any genuine business: the accounts of Haymoks for the relevant period show no business and no trace of any such loan.

440. Second, at the time, Mr Pinaev told Bordier that he was the beneficial owner of the Haymoks accounts and that the transfers were for his "*personal use*". He admits speaking to Mr Giovanna to authorise these transfers on 12 or 13 October and on 13 October Mr Giovanna recorded that Mr Pinaev was also the beneficial owner of the Haymoks bank accounts. That information must have come directly from Mr Pinaev and is an admission of ownership and control of the money.

441. Third, the payments were made, at the same time, to accounts at two different banks in Latvia and Lithuania. Even Bordier belatedly recognised this as suspicious and indicative of fraud. As submitted by Mr Berry, it seems likely that the use of two payments of €725,000 each was designed to avoid Bordier's money laundering flags, which would have been raised by a single payment of more than CHF 1m.

442. Fourth, the account given of the circumstances and negotiation of the "loan" to Haymoks is commercially not credible. Mr Pinaev had no previous dealings with Haymoks. He asked for no security. He did no due diligence. There is no document evidencing any negotiation. The single email that is said to have been sent during the whole course of a supposedly commercial deal has allegedly been "*deleted*", and is inexplicably irrecoverable. Mr Pinaev has belatedly, and incredibly, said that the purpose of the loan was to "*achieve a better than average return*". Mr Pinaev initially refused to produce the loan agreement, citing supposed confidentiality concerns. He then produced an executed loan agreement for €3 million but noting that it "*may not be the final Agreement*". He has since provided no less than <u>four</u> further versions of

it, said to have been drafted and couriered to him by Haymoks, with wide-ranging disparities in terms and format, but all bearing the very same signature of a Julia Bodnya (said by Mr Pinaev to have been the beneficial owner of Haymoks, to whom he was introduced by a trusted Latvian acquaintance called Vitaly Shavlov), stamp of Haymoks and stamp of Pleator, and yet none of which is "right". The fourth version was produced by Mr Pinaev on 14 January 2013, two days before his cross-examination on assets began, as "*the latest and most complete version of the final loan agreement available to me*" but, as submitted by the Mr Berry, was rapidly exposed as riddled with errors. The fifth version was produced part-way through that cross-examination, ostensibly to support the answers, given in the previous session, that the "right" signed version was "*definitely*" in Spain. Again, it did not in fact do so because it was not signed. Thus Mr Berry submitted that the very multiplicity of different signed and stamped "wrong" versions of the loan agreement, about which so many different stories were told, and the inexplicable absence so late in the day of a "right" binding agreement, is itself sufficient reason to reject the story that this was a genuine commercial loan. I agree.

443. Fifth, as submitted by Mr Berry, particular features of the documents also undermine Mr Pinaev's story, including:

i) The "wrong" versions all bear the stamp of Pleator despite Mr Pinaev's evidence that he knew they were wrong. This is not explicable in any way consistent with a genuine loan agreement. Mr Pinaev's story that, at a meeting in Riga, he applied the stamp of Pleator to a single sheet, being the last page of an already-drafted agreement given to him by Ms Bodnya, and despite no agreement having been reached he left it with Ms Bodnya for "convenience", is illogical and not credible.

ii) There has on any view been manipulation, properly described as forgery, of the documents by someone, because the very same signature and stamps appears in different places on different versions. The metadata available for two (only) of the versions disclosed by Pinaev in electronic format show the authors and/or the last savers to be Mr Eduard Slobins (an old friend of the Pinaevs from Latvia) and Mr Pinaev himself. If there has been manipulation, it seems to me that the overwhelming likelihood is that this was done or procured by Mr Pinaev.

iii) Mr Slobins seems to have sent an electronic copy, identical to the first version of the "loan agreement" disclosed to the Court, to Mr Pinaev on 2 April <u>2012</u>. Yet according to Mr Pinaev, Mr Slobins was not involved in the supposed transaction in any way. His appearance, both as creator and/or saver of the document and as the sender to Mr Pinaev for the purposes of disclosure, is inexplicable if there was a genuine loan to Haymoks. It is also inconsistent with the story that the document was created by and came from Haymoks, that the last page of the document was first given by Ms Bodnya to Mr Pinaev in Riga in August or September 2011, and that "wrong" versions, and also the "right" final version, were sent to him by courier by Haymoks. If any of this were true, Mr Slobins and Mr Pinaev would not have been able to send and disclose an electronic version, created much later, with metadata.

iv) The metadata indicates creation dates on or after 20 October 2011 and thus after the 3 October 2011 date, which the purported documents all bear, and indeed after the money transfers on 13 October 2011, which are allegedly justified by a prior loan agreement. The creation dates are inconsistent with Mr Pinaev's evidence that the last page of the document was first given to him by Ms Bodnya in Riga in August or September 2011, and that "wrong" versions, and also the "right" final agreement, were sent to him at the beginning of October 2011.

v) Mr Pinaev wrote to Haymoks at its corporate office in Belfast to ask for consent to disclosure. If, as he says, his contacts were only with Messrs Shavlov and Ms Bodnya, this would seem an empty charade.

vi) Although ordered to produce all documents relating to the granting of, transfer of funds under, operation and management of, provision of security and due diligence enquiries relating to this loan, no documents have been produced except Ms Kovarska's payment instructions to Bordier and the various versions of the Haymoks 'loan' document.

444. In light of all the above, Mr Berry submitted that the inevitable conclusion is that Haymoks is another shell company, with no genuine business, used as a means of removing funds from the Pleator Bordier account beyond the reach of the claimants and the anticipated freezing orders; and that the many loan agreement documents were fabricated by Mr Pinaev (or with his knowledge) to create the false impression that there was a commercial context for the transfers in an attempt to hide more of the fraud proceeds with Mr Slobins. I agree. In particular, it is my conclusion that the transfer to Haymoks is inconsistent with the monies received into the Pleator account being a genuine commercial investment for Gemini or any third party.

Dalberg

445. On 19 October 2011, CHF 800,000 was transferred from Ms Kovarska's account at Julius Baer to an account at Rietumu Bank in Latvia in the name of Dalberg International Ltd ("Dalberg") which, according to Mr Peto's submission was "*done in the interests of Gemini*". The transfer was effected supposedly pursuant to (or at least in accordance with) a Loan Agreement seemingly of that date i.e. 19 October 2011 between Ms Kovarska and Dalberg (the "Kovarska-Dalberg Loan Agreement").

446. Dalberg is a BVI company of opaque ownership (its directors and beneficial owners have not been disclosed) and with no apparent business but according to Ms Kovarska's evidence, it is "Eduard Slobins' company". That may well be right but, in any event, an email response from Mr Slobins to an enquiry made by the claimants' solicitors in the course of the trial is that "*… from the beginning this was not a real loan …*" and that this was a "favour" for Mr Pinaev: "*… the favour was to receive money from Mara's [i.e. Ms Kovarska's] account and forward it to another company. I don't remember the exact reason but it sounded pretty real at that time. The payment was done to another company after couple of days when the money was received …*" Mr Peto submitted that this was not "evidence"; that the claimants could not rely upon it "as such"; and that, at best, it is evidence of Mr Slobins attempting to use these proceedings as an excuse to escape his legal obligations.

447. Even putting the emails from Mr Slobins on one side, it is my conclusion that this supposed loan agreement is a fake or a sham or both for the following reasons:

i) Documents disclosed by the Pinaevs include a previous purported loan agreement dated 7 January 2011 between Pleator and Dalberg for some US$ 400,000. The annex to that purported loan agreement describes the loan as a "*Shareholder Loan Agreement*" which clearly suggests that Mr Pinaev has an (undisclosed) interest in Dalberg – although Mr Pinaev now claims that this is (another) error.

ii) The timing of the original transfer of CHF 800,000 is, in my view, significant i.e. it comes very shortly after the Pinaevs have left Switzerland for Israel following the events described above.

iii) The terms of the "Kovarska-Dalberg Loan Agreement" and the absence of any security are inconsistent with the suggestion that this transfer was a genuine commercial investment "*…. done in the interests of Gemini…*" or indeed any genuine third party investor.

iv) Originally, Ms Kovarska said that this was a loan provided by her to Dalberg "*for business development purposes*" (but gave no further detail) on terms of a loan agreement apparently dated 19 October 2011. It is common ground that this document must have been signed at least a short while after the transfer of funds. Mr Peto submitted that this does not undermine the bona fides of this loan arrangement because, as he submitted, that is common, especially between trusted commercial partners and in circumstances where Ms Kovarska had only recently moved to Israel. Even if that is right, if this were indeed a genuine loan, I would have expected at least some contemporaneous documents (e.g. emails) confirming even in broad terms the intended arrangement; but there are none.

v) Be that as it may, Mr Pinaev subsequently explained in his third witness statement that this loan was made to enable the interest payable on it to help offset the interest of 2.6% payable on the loan from Julius Baer on the Conches Villa and that it was made "*for cashflow reasons*". That latter explanation is also difficult to accept because, at least according to the loan agreement, the "loan" involved tying-up the monies for two years, with interest only being payable at the end of that period.

vi) According to Ms Kovarska's third witness statement, this money was part of the mortgage monies from Julius Baer bank originally intended to be used for development of the Conches Villa – but "surplus" to such needs; and that in order to put this surplus to "good use", she "gave" this CHF 800,000 by way of loan to "Eduard Slobins' company" i.e. Darlberg. That explanation is also difficult to accept because when the Julius Baer bank asked her (on 20 October 2011) who was the beneficial owner of Dalberg, she claimed not to know and to need time to respond. As submitted by Mr Berry, had there been a genuine loan agreement with a company called Dalberg owned by her old friend, Mr Slobins, she could and would have replied instantly to that effect; that the obvious explanation is that Dalberg is in truth a vehicle for the Pinaevs; that they had not yet, as at 20 October 2011, made up the cover-story that Mr

Slobins was the beneficial owner; and that Ms Kovarska therefore had to play for time.

vii) In response to the Walker J Order for the disclosure of the documentation relating to this supposed "loan", the Pinaevs provided (i) an invoice dated 1 June 2011 for US$ 1,213,380 from Dalberg to a Hong Kong company, Richly Pacific International Inc, for "*organisation of arrangement, development and dispatch of the Customer's empty rolling stock from railway station Manchzuriya*"; and (ii) an agreement dated 1 November 2011 between Dalberg and Megaterra Ltd (apparently a Cypriot company with a Latvian bank account and an Edinburgh fax number) for the sale of gas and an agreement between Dalberg and Foxside International Ltd dated 7 June 2011. However, when cross-examined as to her assets, Ms Kovarska had no idea how these documents related to the purported loan. No other documents have been disclosed pursuant to the Walker J. Order, but Mr Pinaev now says, without any supporting evidence, that the final US$ 200,000 outstanding was repaid at some stage prior to 2 March 2012 "*by Dalberg paying to Luxurex certain losses I had incurred on margin calls for foreign exchange transactions*". However, it would seem from other documents that Luxurex was yet another façade.

Calorna

448. Meanwhile, on 10 October 2011, Mr Pinaev had opened a new account at a different private bank in Geneva – Hottinger & Cie – over which Ms Kovarska was given a power of attorney and into which the sum of CHF 2m was deposited from the Pleator account at Bordier. Various sums were subsequently paid away from that account. The largest single payment – of US$ 528,861 – was made on 3 February 2012 to an account of Calorna Investments Inc ("Calorna"), a Belize company without any apparent business, at Tallinn Business Bank in Estonia. When initially asked what had happened to the money in the Hottinger account, Mr Pinaev said that "*to the best of [his] recollection, [the monies] were spent in refurbishment of the [Conches Villa], professional fees and a loan to Miss Julia Balk*". At that stage, no mention was made of any payment to Calorna. However, Mr Pinaev subsequently confirmed to the claimants' solicitors that there had indeed been a transfer to Calorna and that this was a genuine commercial loan; and he (eventually) disclosed the supposed loan agreement pursuant to Walker J's Order. Mr Pinaev's original explanation was that the loan was "*for the purposes of business development*"*;* and that it was to "*facilitate through Petrovs … introductions to the privatisation programmes in the Municipality of Riga*". He also claimed that "*Internet, Google and other enquiries* [*were*] *carried out at the time*" by way of due diligence although no due diligence documents were disclosed.

449. As submitted by Mr Berry, the supposed loan agreement appears to have been altered; it is on uncommercial terms (a five-year interest-free loan without security); and makes no sense as drafted. In the event, Mr Pinaev subsequently in effect admitted in his third witness statement on the eve of his cross-examination as to assets that this supposed "loan" was indeed a sham. As he states in §35.1 of that statement, the sum of US$ 528,861.81 (equivalent to €400,000) was paid to Mr Alexsandrs Petrovs so that "*… he would have the opportunity of being involved in infrastructure investment…*". Mr Pinaev also there confirms that as stated by Mr Petrovs in his

affidavit, the money will not be repaid and "*… it is not right to call this payment a "loan" in a proper sense. Mr Petrovs is a lobbyist in Latvia and has government contacts…*". As submitted by Mr Berry, Mr Pinaev thus belatedly admitted, in effect, misleading the Court as well as the claimants; that the transaction now supposed is still uncommercial and unlikely: it asserts corruption in the government and officials of an EU Member State, for the purpose of nebulous and unclear "*privatisation*" investment without any details that would permit independent verification. (In cross-examination, Mr Pinaev refused to provide any further explanation on grounds of "self-incrimination".) Moreover, Mr Pianev's evidence as to what Mr Petrovs was supposed to do with the monies is inconsistent with Mr Petrovs' own statement. Further, it appears that Mr Pinaev wrote to Calorna at its registered office in Belize to obtain permission to disclose the loan agreement. As submitted by Mr Berry, if Mr Pinaev's contact was Mr Petrovs and his arrangement was with him personally and the loan agreement was a sham, as he now says, this too was an empty charade designed to mislead.

450. In light of the foregoing, Mr Berry submitted that the inevitable conclusion is that Calorna is also a shell company, with no real activity, used as a means of removing funds beyond the reach of the anticipated freezing orders; and that the loan agreement was fabricated to create the false impression that there was a commercial context for the transfer. I agree. In particular, it is my conclusion that this transfer of monies is inconsistent with the monies received into the Pleator account being a genuine commercial investment for Gemini or any third party.

Pleator/Rossmore

451. As stated above, the claims against Mr Pinaev's companies (i.e. Pleator and Rossmore) are for damages and/or equitable compensation in the sum of US$ 36,988,000 and US$ 6,131,000 respectively and/or an account on the basis of dishonest assistance, procuring breach of contract and/or knowing receipt. In the light of my findings, both these companies were used by Mr Pinaev as a façade to channel the fraud proceeds and thus these claims succeed in full.

Ms Kovarska

452. So far as Ms Kovarska is concerned, it is important to bear in mind that there is no evidence – and the claimants do not say – that she was in any way involved in the actual commission of the Sign-On Fraud or the Argentinean Warrants Fraud. Rather, the claimants say that she is liable for (a) dishonest assistance with regard to the entire amount received by Pleator from Arcutes i.e. US$ 36,998,000 (including US$ 500,000 received via Firmly Oceans); alternatively (b) knowing receipt in respect of (i) CHF 14,720,000 (sums received by Ms Kovarska from Pleator for the purchase of the Conches Villa); (ii) €1,450,000 (the sum paid from the Pleator account to Haymoks); and (iii) US$ 528,861 (the sum paid from the Pleator account to Calorna).

453. Mr Peto submitted (and I accept) that although these two heads of claim against Ms Kovarska – dishonest assistance and knowing receipt – arise out of similar facts, this should not disguise the difference between them as appears, for example, from the passage (relied upon by Mr Peto) in *McGrath, Commercial Fraud in Civil Practice* §5.11:

> "*The distinction between these two heads of claim is that in a knowing receipt claim, liability is imposed for the (beneficial) receipt of the proceeds of a fraud, whereas in a dishonest assistance claim, liability is imposed because of the defendant's participation in a fraud. It may, of course, be possible for the receipt of the fraud proceeds to amount to assistance for the purpose of a dishonest assistance claim. But given that the receipt must be the defendant's beneficial receipt (i.e. for his own purpose/own benefit) it does not so readily fall into the category of assistance to the main perpetrator by way of receipt of some of the fraud proceeds.*"

454. As to the claim for dishonest assistance, the claimants say that the relevant breaches by Mr Pinaev which were assisted by Ms Kovarska are: (a) he caused/facilitated the laundering of the Fraud Proceeds into and through a number of different offshore accounts; (b) he made a secret profit of at least US$ 36,998,333 which was received through Pleator and Rossmore; and (c) he failed to disclose to Otkritie his own wrongdoing or that of Messrs Urumov, Kondratyuk and Mr Jemai; and that Ms Kovarska was dishonest because she knew alternatively suspected (and did not ask obvious questions) that the monies received by Pleator had been wrongfully obtained by Mr Pinaev or were monies to which he was not entitled.

455. In this context, Mr Peto raised what was, in effect, a threshold point of law. In particular, he submitted that what he described as "*post facto* handling of funds" does not give rise in law to a liability for dishonest assistance. In support of that submission, he relied upon a passage from *McGrath* at §16.52:

> "*Where it is not said that the third party has induced the breach but has provided assistance, it is necessary to show that the relevant assistance played more than a minimal role in the breach being carried out: Baden v Societe Generale [1983] 1 WLR 509, 574 … [If] the breach has been completed prior to the assistance being provided, it is likely that the court will conclude that there was no assistance as such with the breach: Brown v Bennett [1998] 2 BCLC 97, 105 – affirmed on this point by the Court of Appeal [1999] 1 BCLC 649.*"

For present purposes, I am prepared to assume that that summary of the law is correct. However, in my view, it does not support the broad proposition advanced by Mr Peto. The relevant authorities are referred to and considered in the succeeding passage in *McGrath*. Consistent with what is there stated in the body of the text, it seems to me that where dishonest assistance is provided by D by way of laundering of the traceable proceeds of the breach of trust/fiduciary duty, it would be remarkable if D were not liable therefor even if D was not involved and had not provided any dishonest assistance in the "original" breach. In my view, the simple reason why D will (or at least may) be liable for dishonest assistance in that context is that the breach of trust/fiduciary duty will not necessarily be "complete" at a single moment of time but will (or at least may) continue in the context of the handling of the fraud proceeds. As a matter of analysis, there may be other reasons why such accessory liability will (or

may) arise in such circumstances but, for present purposes, I do not consider that it is necessary to consider these. For these reasons, I reject Mr Peto's threshold point.

456. In support of their claim against Ms Kovarska based on dishonest assistance for the entire sum of US$ 36,998,000 received by Pleator, Mr Berry submitted that, as a matter of law, a defendant's liability is not limited to the loss caused by his/her assistance but extends to the loss resulting from the relevant breaches of fiduciary duty; and that it is inappropriate to become involved in attempts to assess the precise causative significance of the dishonest assistance in respect of either the breach of trust or fiduciary duty or the resulting loss: *Grupo Torras SA v Al-Sabah* [1999] CLC 1469, 1667 per Mance J (affirmed on this point [2001] CLC 221 at §119 per Robert Walker LJ, Tuckey LJ and Sir Murray Stuart-Smith); *Snell's Equity* (32nd Ed) §30-080. The passage from the judgment of Mance J is as follows:

> "*Mr McGhee submits that a plaintiff must prove that the dishonest assistance has itself caused the loss suffered by the plaintiff. Otherwise, he submits, the plaintiff's claim should fail for lack of causation or lack of any relevant assistance. <u>The starting point in my view is that the requirement of dishonest assistance relates not to any loss or damage which may be suffered, but to the breach of trust or fiduciary duty. The relevant enquiry is in my view what loss or damage resulted from the breach of trust or fiduciary duty which has been dishonestly assisted. In this context, as in conspiracy, it is inappropriate to become involved in attempts to assess the precise causative significance of the dishonest assistance in respect of either the breach of trust or fiduciary duty or the resulting loss.</u> To that extent the accessory nature of the liability presently under consideration distinguishes the present from the situation in Target Holdings Ltd. v Redferns [1996] 1 AC 421, where the House of Lords was concerned with a simple breach of trust. But it is necessary to identify what breach of trust or duty was assisted and what loss may be said to have resulted from that breach of trust or duty. An allegation of a single and continuing conspiracy to commit and cover up a misappropriation is one thing. <u>But it may involve a series of breaches of trust or fiduciary duty. The actual loss may have resulted at the early stage of misappropriation, rather than from the cover up. Dishonest assistance confined to the cover up stage may not or not necessarily attract liability for such previous loss.</u>*" (emphasis added)

The passage from the judgment in the Court of Appeal is as follows:

> "*Paragraphs 13 and 14 of the Notice of Appeal criticise the judge's approach to causation, arguing that GT failed to establish a causal link between any acts or omissions on the part of Mr Folchi and the loss which the judge found GT to have sustained. However, we think the judge was right when he said:*

> *"... the requirement of dishonest assistance relates not to any loss or damage which may be suffered but to the breach of trust or fiduciary duty. The relevant enquiry is ... what loss or damage resulted from the breach of trust or fiduciary duty which has been dishonestly assisted. In this context, as in conspiracy, it is inappropriate to become involved in attempts to assess the precise causative significance of the dishonest assistance in respect of either the breach of trust or fiduciary duty or the resulting loss."*

This is the essence of accessory liability clearly spelled out by Lord Nicholls in Royal Brunei. In any case Mr Folchi was, as the judge found on ample grounds, a linchpin of the arrangements for all four transactions in respect of which he was held liable."

457. It is my conclusion that Ms Kovarska knew very well that the monies received by Pleator were monies which Mr Pinaev was not entitled to i.e. fraud proceeds; or, at the very least, that she suspected that this was the case and that she deliberately did not ask what were obvious questions lest she learned what she did not want to know. I reach that conclusion in the light of all the matters concerning her and her evidence set out above including (at the risk of repetition): (i) the obviously close relationship between Mr Pinaev and Ms Kovarska; (ii) the fact that she had a power of attorney for the Pleator account; (iii) the fact that the amount deposited into the account was so very large; (iv) her suggested lack of any detailed knowledge with regard to the amount or source of such monies which, in my view, was not credible; (v) her lies with regard to the Conches Villa, the "repayable gift", the Kovarska-Dalberg Loan Agreement and the circumstances relating to the transfer to Haymoks; (vi) the fact that she benefitted personally from at least some of the money received into the Pleator account as shown in Figure 7.1; and (vii) the events in October 2011 including the opening of the Hottinger account (over which Ms Kovarska had a power of attorney) and the circumstances relating to the transfer to Calorna.

458. But such knowledge is not, in my judgment, sufficient of its own to found liability for dishonest assistance. As set out in the above passages from *Grupo Torras*, I accept, of course, that the relevant enquiry here is what loss and damage has resulted from the breach of trust or fiduciary duty which has been dishonestly assisted by Ms Kovarska and that it is inappropriate to become involved in attempts to assess the precise causative significance of the dishonest assistance in respect of either the breach of trust or fiduciary duty or the resulting loss. However, given that (as the claimants accept) Ms Kovarksa was not in any way involved in the actual commission of the Sign-On Fraud or the Argentinean Warrants Fraud, it seems to me that the burden remains on the claimants to show – at the very least – what actual <u>assistance</u> has been provided dishonestly by Ms Kovarska in relevant respect; and, in my view, the claimants cannot succeed in their case for dishonest assistance against her in respect of the entire amount received by Pleator (i.e. US$ 36,998,000) by simply asserting generally, as Mr Berry did in his oral submissions in reply, that Ms Kovarska assisted Mr Pinaev over a period in dissipating the proceeds received into the Pleator Bordier account and identifying only <u>some</u> acts of dishonest assistance by Ms Kovarska with

regard to only part of such monies. Nor do I consider that such conclusion is necessarily justified simply on the basis that Ms Kovarska had a power of attorney over Pleator's Bordier account. For example, there is no evidence whatsoever that Ms Kovarska provided any dishonest assistance at all with regard to the Ferraris which were purchased by Mr Pinaev using part of these monies; and I see no proper basis for imposing liability on her in relation to the use of such monies to purchase the Ferraris even if, as I have found, she knew that Mr Pinaev was not entitled to such monies. To this extent, it seems to me that Ms Kovarska stands in a slightly different position from that of Ms Balk.

459. In light of these observations, it is my conclusion that the claim against Ms Kovarska for dishonest assistance for the entire amount received into the Pleator account fails. However, in the light of my earlier findings, there can, in my view, be no doubt that the claim for knowing receipt succeeds in the amounts claimed viz (i) CHF 14,720,000 i.e. the sums received by Ms Kovarska from Pleator for the purchase of the Conches Villa; (ii) €1,450,000 i.e. the sum paid from the Pleator account to Haymoks; (iii) US$ 528,861 i.e. the sum paid from the Pleator account to Calorna. Mr Peto submitted that such claims cannot succeed in respect of the last two amounts because there was no evidence that such amounts were in fact received by Ms Kovarska herself. It is true that there is no direct evidence to that effect but, as submitted by Mr Berry, it is my conclusion that in the light of the circumstances relating to such payments, the overwhelming probability is that they were part of a money-laundering exercise and transferred/received for the benefit of Mr Pinaev and Ms Kovarska jointly. Alternatively, it is my conclusion that these particular payments are, in any event, recoverable on the basis of dishonest assistance on the part of Ms Kovarska.

Part IX: The Gersamia Defendants

Mr Gersamia

460. As Mr Casella accepted, Mr Gersamia stands in the position of someone who has admitted that he intended to perpetrate a massive fraud on Threadneedle. However, Mr Casella submitted, in effect, that Mr Gersamia's frank admission of such conduct is to be regarded as a point in his favour. I do not accept that submission. It seems to me that given the events in July/August 2011 and, as appears from the internal enquiry carried out by Threadneedle, Mr Gersamia really had no alternative but to acknowledge his involvement in the intended fraud on Threadneedle.

461. Be that as it may, Mr Gersamia's evidence was that he was not involved in any fraud on Otkritie. In light of my findings above, I do not accept that evidence. I am prepared to accept that Mr Gersamia may not have been aware of all the elements of the Argentinean Warrants Fraud nor perhaps the full extent of the fraud. But I have no doubt that he was an active participant in the fraud by providing dishonest assistance generally to the other fraudsters (including the provision of information with regard to Threadneedle) and by being prepared to pretend that Threadneedle was involved in the Second Trade. According to Mr Kondratyuk, that was certainly his broad role for which he was rewarded most handsomely by receiving a huge share of the fraud proceeds shortly after the execution of the Second Trade. However, despite Mr Gersamia's protestations to the contrary and even ignoring Mr Kondratyuk's evidence, there is, in my judgment no doubt that on 9 March, Mr Gersamia was well

aware that the buy side of the Second Trade was being executed that day and the fake forward trade was going to be entered in Otkritie's systems; and that, as must have been agreed in advance as part of the fraudulent plan, he was, in effect, providing assistance and on "standby" next to his telephone in case anyone from Otkritie contacted him (if they did, he would join in the pretence that Threadneedle was participating in the Second Trade, as agreed with his co-conspirators) and in order to assist Mr Gherzi in answering requests from Otkritie's risk department. In summary and even ignoring the evidence of Mr Kondratyuk, I reach that conclusion for the following main reasons.

462. First, it seems to me that the overwhelming probability is that the main fraudsters (i.e. Mr Urumov, Mr Pinaev and Mr Kondratyuk) would have wanted at least one "insider" i.e. an individual within Threadneedle who could provide necessary information to effect the fraud or at least "oil the wheels" and, if asked, could confirm that Threadneedle was indeed involved in what became the Second Trade. Without such an "insider", there would almost certainly have been an unacceptable risk of the intended fraud being discovered before it was executed. Second, apart from Mr Gersamia, there was no other individual at Threadneedle who could fulfil this role. Third, the relevant communications which I have summarised above show that Mr Gersamia was closely involved in the fraud. In particular, the extended Bloomberg chat during the morning and early afternoon of 9 March (when the Second Trade was done) between Mr Gersamia and Mr Gherzi is, in my view, critical. I have already quoted or referred to the relevant passages of that chat in the course of events on that day. At the risk of repetition, the chat lasted on and off for most of the day. Mr Gersamia logged in using his Threadneedle account from his desk at Threadneedle's offices in London and supplied key information to help Mr Gherzi answer queries from Mr Shamarin and others. I accept that the language is in places cryptic but, in my view, it is plain that Mr Gersamia was providing important relevant information including the name of the precise Threadneedle entity that would be contracting with OSL and the audited financial statements for Threadneedle. (Mr Gersamia obtained the documents requested from the head of Threadneedle legal department and asked one of the secretaries at Threadneedle to scan them, before emailing them to Mr Gherzi, who passed them on to Otkritie's risk department.)

463. When Mr Gherzi was recalled for cross-examination on day 36 of the trial, Mr Casella put it to Mr Gherzi that because at 9.25am on 9 March Mr Gherzi emailed Mr Popkov to say that the counterparty on the outgoing leg of the Second Trade was "Threadneedle Asset Management", and because Mr Gherzi may have spoken to Mr Pinaev minutes before he sent that email, Mr Gherzi did not obtain that information from Mr Gersamia and that this somehow exculpates Mr Gersamia. I do not agree. As submitted by Mr Berry, whether or not Mr Gherzi had obtained this <u>general</u> information from Mr Pinaev (contrary to Mr Gherzi's own recollection) it was Mr Gersamia who had provided to Mr Gherzi the identity and address for the <u>specific</u> entity that was supposed to be transacting with Otkritie, as well as the audited accounts, and who (as is apparent from the Bloomberg chat) was anxious that the Second Trade proceeded as planned by the conspirators.

464. The main thrust of Mr Gersamia's evidence with regard to this chat on 9 March was that it was not concerned with any particular deal or deals at all but related simply to the setting up of trading lines in the abstract with regard to possible future dealings

between Otkritie and Threadneedle. I do not accept that evidence. It is fair to say that there is one entry in the chat at 13:37:08 when Mr Gherzi says: "*… thanks yes it is for actt opening etc…*" but, in my view, it is plain from other entries that they are talking about the execution of a particular deal on that day which can only be a reference to the Second Trade. Thus, again at the sake of repetition, at 14:37:48, Mr Gherzi says: "*… everything is ok all approvals are given and they are closing as we speak I am being told…*"; and at 15:38:44, Mr Gherzi says "*… booking it now internally so assume all closed …*", to which Mr Gersamia responds: "*ok*". The conversation then continues with Mr Gersamia saying that he bought himself a "*big mac*" and Mr Gherzi saying that he was thinking along the same lines but that he was not sure if he deserved a "*super-size deal*". Despite Mr Gersamia's protestation in evidence to the contrary, it is my clear conclusion that the language used including references to "*closing*", "*booking*" and "*assume all closed*" is not concerned with the opening of trading lines but is and can only be a reference to the execution of one or more deals; and that Mr Gersamia's evidence that he was not aware of the fake forward trade is a deliberate lie.

465. Fourth, there is a number of other points which, in my view, strongly support the conclusion that Mr Gersamia participated in the fraud. Standing on their own, I do not consider that these points would of themselves justify a finding to that effect but in my judgment both individually and collectively they strongly support such conclusion. First, on 10 March, Mr Gersamia made some inquiries with Stral Zarkovic, a friend of his at BarCap, who had sold Snoras/Gemini some 600 million warrants for the purposes of the Second Trade. On its face, this seems too much of a coincidence and inexplicable save on the basis, as submitted by Mr Berry, that it is likely that Mr Gersamia wanted to satisfy himself that he had not been cheated by Mr Urumov and Pinaev. It is also noteworthy that in the course of that chat, Mr Gersamia asked Mr Zarkovic whether he knew how to delete a Bloomberg chat. In cross-examination, Mr Gersamia could not explain why he had asked this question; and in my view there is no legitimate reason for so doing. Second, later on, in April, Mr Gersamia had two Bloomberg chats with his friend, Mr Supranonok. Mr Berry submitted that in the course of these chats, Mr Gersamia was in effect suggesting to Mr Supranonok that he should try a fraud in the Argentinean Warrants and that it was essential to buy the warrants. That may be right but in my view that is an inference too far. What is certainly noteworthy is that after Mr Gersamia tells Mr Supranonok that it is essential to buy Argentinean warrants, the conversation continues as follows:

> "*Supranonok: dude by the way…*"
>
> "*Gersamia: not here !..*"
>
> "*Supranonok: !...*"

Mr Gersamia's evidence in cross-examination was that when he said "*not here*", this was "*… in reference to the trading portfolio that he was mentioning at the time, and hence the exclamation marks. But the items he was looking at, for instance, Portuguese banks, ENRC, et cetera, he should not put into that portfolio Argentine warrants.*" In my view, that explanation lacks credibility. In context, it seems plain that Mr Gersamia was telling Mr Supranonok not to say what he was going to say on the Bloomberg chat but it is impossible to say exactly what that might have been.

466. Fifth, Mr Gersamia's evidence that there was no discussion of the warrants between 18 March and June 2011 is untrue as Mr Gersamia was forced reluctantly to accept. In my judgment, such evidence was not only untrue but a deliberate lie.

467. In my judgment, my conclusion that Mr Gersamia was actively and dishonestly involved in the Argentinean Warrants Fraud is fortified and reinforced by the flow of monies as summarised diagrammatically in Figure 8 and the circumstances relating thereto. Again, it is impossible and unnecessary to deal with each movement of monies but I deal below with what appear to be the most significant points – taking them, so far as possible, in chronological order.

468. As soon as the Second Trade had been executed on 9 March, Mr Gersamia set about acquiring an offshore vehicle viz Templewood, incorporated in the BVI. He did so through Mr Vikrant Bhalerao at Clariden Leu. Mr Gersamia's evidence was that this introduction was by Mr Gherzi. Mr Berry submitted that this was untrue in particular because he (i.e. Mr Gherzi) first dealt with Clariden Leu some two weeks *later*; that Clariden Leu was in fact Mr Urumov's private banker; and that the overwhelming likelihood is that this introduction was made by Mr Urumov who was on the same day opening a new account through Mr Bhalerao for Denning. That submission may well be correct although the conflicting evidence renders any finding difficult. In any event, there can be no doubt that at this time Mr Gersamia did indeed set about establishing Templewood and a bank account for that company through Clariden Leu. Further, in that context, there is no doubt that Mr Gersamia lied to Clariden Leu about his financial position. In particular, the bank's contemporaneous documents show that he told Clariden Leu that the account would be funded by an initial expected amount of US$ 2m from "other Swiss banks" being "transfers from the client's account with Swiss banks like UPB, Pictet, Lombard, ODA"; that his permanent residential address was in Tbilisi in Georgia; that his net assets were US$ 12m (including US$ 10m in property and US$ 2m in other investments); that his net annual income was US$ 2 to US$ 3m; and that he was liquidating a property investment in Georgia to pay US$ 7 to US$ 8m to fund the account. These are all very impressive figures. However, in cross-examination, Mr Gersamia accepted that all this information was untrue. Mr Gersamia's various suggestions that he could not remember providing this information or that it was provided knowing it to be false on the encouragement of Mr Bhalerao and, in particular, to "get a better service" or that Mr Bhalerao simply made up this information himself are, in my judgment, not only mutually inconsistent but also deliberate lies. Further, in my judgment, Mr Gersamia could give no satisfactory answer as to why he decided to set up Templewood and to open this account at this very time i.e. virtually simultaneously or almost immediately after the Second Trade. In my judgment, the overwhelming inference is that Mr Gersamia did this in anticipation of receiving the monies which he had been promised for his role in the Argentinean Warrants Fraud – which as appears from Figure 8 is exactly what happened a few weeks later when, following a payment of approximately US$ 10.1m on 30 March 2011 from Arcutes to Belux (which was, as I have stated, a Hong Kong company owned by Mr Gersamia's brother-in-law, Mr Dolidze), Belux in its turn transferred the sum of US$ 6.9m on or about 6 April 2011 to Templewood. The payment from Arcutes to Belux was described to Bordier at the time as a 'finder's fee' for the Ural Pharma deal but the transaction was processed by Bordier without any supporting contractual documentation.

469. As to these payments, the case advanced by Mr Gersamia and Mr Gersamia Snr (at least as originally summarised in Mr Casella's written closing submission) was in summary as follows:

i) The amount of US$ 10.1m received by the Gersamia defendants was received pursuant to a Loan Agreement (the "Arcutes-Belux Loan Agreement") which, say the Gersamia defendants, was entered into on a bona fide basis in the belief (of the Gersamia Defendants at least) that it was a legitimate transaction, without any knowledge of any fraud.

ii) Mr Gersamia became aware from Mr Urumov and Mr Gherzi that they had access to significant funds to invest. One of the suggestions that Mr Gersamia made was that a company (i.e. Belux) owned by his brother-in-law (i.e. Mr Dolidze) might be looking for an investment because at the time there was a shortage of capital and lending rates were quite extortionate in Georgia (in excess of 20%) and they were looking for capital to develop a project. Mr Gersamia put his father, who was looking to undertake some business dealings on his own account, in touch with Mr Gherzi. Mr Gersamia Snr and Mr Gherzi met on a few further occasions and Mr Gherzi informed him that he was looking for opportunities to invest in the CIS region on behalf of investment funds with which he was connected. Mr Gersamia Snr also recognised that this opportunity may be of interest to his son-in-law, Mr Dolidze, for his Georgian furniture import and retail business known as Belux, particularly since the terms proposed were very attractive compared to those generally available in Georgia.

iii) Mr Gersamia Snr discussed the possibility with Mr Dolidze and as a result Mr Gherzi and Mr Gersamia Snr arranged a loan to Belux in the amount of US$ 10.1m.

iv) Mr Dolidze was going to use the loan to build a furniture showroom on a piece of land which he owned in Georgia but he did not yet have planning permission to build on the site and at that time needed only half a million dollars to enable him to import more furniture into Georgia.

v) Mr Gersamia Snr was informed by Mr Gherzi that a Swiss based investment fund called Gemini would be providing the loan.

vi) The loan was formalised by way of the Arcutes-Belux Loan Agreement dated 1 April 2011 for the expressed purpose of providing "working capital" to Belux.

vii) As Mr Dolidze did not need most of the funds until he was in a position to develop the site he had, it was agreed that Mr Gersamia would invest the funds. This agreement was formalised by way of an agreement dated 1 April 2011 in which it was agreed that Mr Gersamia's company, Templewood, would invest funds in the amount of US$ 6.9m on behalf of Belux (the "Templewood IMA").

viii) Mr Gherzi informed Mr Gersamia Snr that he (Mr Gherzi) would need to be paid 25% of the loan amount and that this amount would need to be repaid to

his company, Airdale. In order that Mr Gersamia Snr could make this payment, an agreement was entered into with Belux that Mr Gersamia Snr would be paid a referral fee in the amount of US$ 2.6m – the "Gersamia Referral Agreement".

ix) The amount of US$ 10.1m was received by Belux on 6 April 2011 pursuant to the Belux Loan Agreement. Of this sum, US$ 6.9m was paid to Templewood pursuant to the Templewood IMA; and US$ 2.3m was paid to Mr Gersamia Snr pursuant to the Gersamia Referral Agreement. Mr Gersamia Snr, through his company Bexerton, arranged payment of US$ 2.5m to Airdale pursuant to a further agreement – the "Bexerton-Airdale Consultancy Agreement"; and he himself was left with US$ 125,000 (US$ 25,000 more than was due) partly because Mr Gherzi repaid US$ 75,000.

x) The property development has yet to occur due to a number of difficulties including the obtaining planning permission, however the plans still remain deposited with the relevant planning office in Georgia.

470. As to this summary of the Gersamia defendants' case, it is important to note that it relies in part on what is set out in a written statement of Mr Dolidze which was originally served on behalf of the claimants but which was <u>not</u> put in evidence by the claimants; and, in the event, Mr Casella refrained from seeking to rely upon it himself on behalf of the Gersamia defendants. The result is that Mr Dolidze's statement was not in evidence.

471. In any event, what is plain, as appears from Figure 8, is that of the sum of US$ 6.9 million received by Templewood, various monies were then disbursed including: (i) US$ 3.34m to a Ukrainian-based Bermudan investment company, Jaspen Capital Partners ("Jaspen"), run by Mr Gersamia's close friend Mr Supranonok, purportedly for trading in corn futures – all of which was (it is said) subsequently 'lost'; (ii) around US$ 1.57m to a newly-established BVI-company called Tremlett International Ltd ("Tremlett"), nominally owned by Mr Gersamia's mother but admittedly controlled and funded by Mr Gersamia, which was then used inter alia (i) in significant part to fund Mr Gersamia's own lavish and hedonistic lifestyle, including *after* the freezing order had been made, as well as to finance his legal expenses; (ii) to 'lend' £250,000 to another BVI company, M Oil, owned by Mr Gersamia's cousin, Michael Mgaloblashvili; and (iii) some US$ 300,000 to an entity called KD Shipping supposedly for 'consultancy' advice in relation to the shipping industry (but which was actually then substantially paid over to Mr Supranonok and which (say the claimants) was obviously to be held for Mr Gersamia's benefit). In effect, the case advanced on behalf of the Gersamia defendants is that such disbursements (and numerous others which remain largely unexplained) were necessarily made by way of "investment" on behalf of Belux pursuant to the Templewood IMA.

472. I do not accept this account by Mr Gersamia and (so far as relevant) by Mr Gersamia Snr of the receipt and disbursement of this part of the fraud proceeds. As submitted by Mr Berry, quite apart from certain contemporaneous 'coded' emails which strongly suggest that the Gersamias were knowingly engaged in the laundering of the fraud proceeds (including some which Mr Gersamia sent when he was thinking of leaving Threadneedle), such account rests, in my judgment, upon a raft of so-called "contracts" which are fakes or shams or both and numerous assertions which both

individually and collectively are not only inherently improbable but also obviously untrue.

The transfers from Arcutes to Belux

473. There is a major disparity between the evidence of the Gersamias, on the one hand, and Mr Gherzi, on the other hand, regarding the background to and making of the Arcutes-Belux Loan Agreement. The evidence of both Mr Gersamia and Mr Gersamia Snr is that they met Mr Gherzi in March when this possible loan was discussed. In that context, Mr Casella relied upon a receipt for a dinner at an Italian restaurant when, Mr Casella submitted, Mr Gherzi met Mr Gersamia and Mr Gersamia Snr – although the contemporaneous documents indicate that this was originally intended to be a dinner between Mr Gherzi and Mr Gersamia alone. Mr Gherzi denies any involvement in any such discussions; and, in particular, his evidence is that the first and only time he met Mr Gersamia Snr was at a football match on or about 8 April 2011. In that context, the claimants rely upon a Bloomberg chat to show (as they say) that Mr Gherzi had not met Mr Gersamia Snr prior to 8 April 2011; and also a later email on 13 May 2011 from Mr Gersamia passing on, apparently for the first time, Mr Gersamia Snr's email address. However, Mr Casella submitted that the Bloomberg chat is to the contrary; and that, in any event, Mr Gherzi is a dishonest witness. As submitted by Mr Casella, there is a paucity of documentary evidence either way. Mr Gherzi has said that he has been unable to locate the email under cover of which he says that the Bexerton-Airdale Agreement was supposedly sent to him. For his part, Mr Gersamia Snr says that he has been unable to locate the email by which he says that the draft loan agreement was sent to him by Mr Gherzi. According to his (Mr Gersamia Snr's) evidence, this is because: (i) the laptop which he was using at the time had suffered a virus, with the result that it lost most of the data in the process and was subsequently wiped and reused; and (ii) his emails are not retained on the server of his internet provider once they have been downloaded to his computer. In my judgment, both those explanations are lacking in credibility – as is Mr Gersamia's professed "inability" to find his passport – or any other document that would show that he was (as he asserts) in the UK at the beginning of March 2011.

474. In any event, the purported Arcutes-Belux Loan Agreement is, in my judgment, a document which is obviously a fake or a sham or both for the reasons given by Mr Berry. First, the suggestion that the purpose of the loan was to provide "working capital" for Belux i.e. to build a furniture showroom on a piece of land which he (Mr Dolidze) owned in Georgia is totalling lacking in credibility. It is true that some documents were produced to support such suggestion including certain architectural plans and a 'project finance' document; but, for various reasons, such documents were, at best, highly suspicious. Second, the terms of the purported Arcutes-Belux Loan Agreement are manifestly uncommercial. In particular, it provides for a 10-year, unsecured loan, with no interest payable for 2 years without any stated purpose for or restrictions on its use. Third, despite Mr Gersamia disavowing any involvement, the loan document itself is derived from the very same template as the supposed Tremlett–M Oil 'loan' with which Mr Gersamia accepts being involved in preparing (and which he now claims was drafted by his cousin, despite the latter's 'signature' being another facsimile). Fourth, payments were subsequently made by Belux (from the supposed Arcutes 'loan' monies) to discharge Mr Gersamia's personal liabilities and for the benefit of Mr Gersamia Snr, which undermines any intention of

repayment. Fifth, emails from March 2011, obtained by the claimants from Threadneedle, give the lie to Mr Gersamia's disavowal of any contemporaneous knowledge of, or involvement in, the payment to Belux and show that he knew that: (i) it was not a loan; and (ii) the lion's share was destined all along for an individual (i.e. him). The email chain shows Mr Dolidze forwarding to Mr Gersamia Hong Kong tax advice from Belux's accountant, who had specifically noted the money laundering implications of the transactions they envisaged, to which Mr Gersamia's succinct response was "*so fck it… send it all to Singapore?*". Sixth, the Arcutes-Belux Loan Agreement also included approximately US$ 2.5m which, as referred to earlier, was subsequently paid via Mr Gersamia Snr and Bexerton to Mr Gherzi apparently pursuant to the Bexerton-Airdale Consultancy Agreement which, in my judgment, is also a fake or a sham or both. Seventh, as already noted earlier, Arcutes was dissolved by its shareholders on 10 May 2011 which would not have occurred if it held valuable rights under the Arcutes-Belux Loan Agreement.

The transfers from Belux to Templewood

475. As stated above, on 6 April 2011, Belux transferred US$ 6.9m to Templewood's account at Clariden Leu, Bahamas. Mr Gersamia's evidence is that this transfer was a legitimate investment on behalf of Belux pursuant to the purported Templewood IMA. I do not accept such evidence for the following reasons. First, its foundation is (at least in part) that the Arcutes-Belux Loan Agreement is valid which, in my judgment, is plainly not the case for the reasons stated above. Second, it is inconsistent with what the Gersamias told Clariden Leu at the time that the monies came from the sale of property in Georgia: the payment reference was "PYT FOR AGREEMENT 01/07/2010" and internal bank documents describe them as the proceeds of a real estate sale to Belux. The Gersamias gave to the bank a fake contract to substantiate that story. (The Gersamias' new suggestion is that it represented some sort of 'security' arrangement. However, that suggestion is, in my judgment, a recent dishonest invention.) Third, the transfers of the monies from Templewood to others (described below) bear no resemblance to any actual commercial investment. Fourth, Belux has previously been used by Mr Gersamia to receive moneys of dubious nature from the Urumovs e.g. a payment of US$ 46,699 from Tenway on 9 November 2010. It is my conclusion that the overwhelming inference is that the Templewood IMA was also a fake or a sham or both; and that the supposed 'loan' to Belux and the subsequent transfer to Templewood were the means of indirectly transferring Mr Gersamia's share of the proceeds of the Argentinean Warrants Fraud into his control, whilst trying to obscure the trail by using offshore companies and accounts.

The transfer of US$ 2.3m to Mr Gersamia Snr/Bexerton

476. As appears from Figure 8, on 8 April 2011, Belux transferred to Mr Gersamia Snr US$ 2.3m. As stated above, this was supposedly pursuant to the Gersamia Referral Agreement but, in my judgment, the overwhelming probability is that that too is a fake or a sham or both. The Gersamia defendants accept that the purpose of this agreement was to provide the funds required to make the payment to Mr Gherzi of US$ 2.5m. However, they say that their belief and understanding was that the purpose of such payment was a referral fee in respect of Mr Gherzi having arranged the loan to Belux. In particular, Mr Gersamia Snr asserted that it is not surprising that 25% of the loan would need to be paid in respect of setting up the loan since such payments were commonplace in the CIS region in which he conducts his business. I do not accept this

evidence. Further, even if that were true, it does not explain why it was necessary for Mr Gersamia to procure Mr Gersamia Snr (and for the latter to agree) to incorporate Bexerton (again through Mr Bhalerao). In my judgment, the overwhelming probability is that such exercise was, as submitted by Mr Berry, a means of siphoning a portion of the proceeds of the fraud to Mr Gherzi via Mr Gersamia Snr and Bexerton thereby disguising the origin and/or beneficiary of the payments: it was dressed up as a 'referral' payment to Mr Gersamia Snr himself (not Mr Gherzi) pursuant to the Gersamia Referral Agreement for onward transmission via Bexerton to Mr Gherzi's own offshore vehicle, Airdale with its account also at Clariden Leu in the Bahamas.

The transfers from Templewood

477. As appears again from Figure 8 and as referred to above, Templewood received US$ 6.9m from Belux on 6 April 2011. Of that sum, on 14 April 2011, Templewood paid US$ 300,000 to an account in Cyprus in the name of KD Shipping. As to KD Shipping, Mr Gersamia initially refused to identify the beneficial owner. In April 2012, he denied knowing the identity of the beneficial owner, but claims to have dealt with a director called Mr Denis Molodkovets whom he accepts is a friend of his and of Mr Supranonok. Mr Gersamia has said that KD Shipping is a subsidiary of a shipping company, KDM Shipping. If that is true then, according to its website, KDM Shipping is a Ukrainian-based shipping company specialising in dry-bulk river-sea freight in the Black, Azov and Mediterranean Seas; and KD Shipping is a Panamanian company, which only became its subsidiary on 25 November 2011 (having previously been owned directly by KDM's shareholders). The circumstances relating to this payment are also highly suspicious. For example, on 19 April 2011, there is a Bloomberg chat in the course of which Mr Gersamia tells Mr Supranonok: "*… main parcel … should be there ready to pick up from post office*" which would seem inexplicable other than as a cryptic and disguised reference to this transfer. The purpose of the US$ 300,000 payment was originally said by Mr Gersamia to have been "*the provision of market analysis and advice in the shipping industry*" including a written report disclosed late (which the interlocutory evidence suggested was generic and obtainable from various Russian-based websites for a small fee). Although Mr Gersamia does not accept that, he acknowledges that the payment would indeed have been excessive for the report alone: he now suggests that more advice was given or promised by way of "*consulting and advisory services in the field of physical agricultural trading*". As submitted by Mr Berry, on any analysis, this would be a remarkable way to use US$ 300,000 supposedly entrusted by its client, Belux, for investment. In fact, however, it is clear that the money was paid to KD Shipping on 14 April 2011 in order to be – and was then actually – funnelled by KD Shipping through to Mr Supranonok (presumably for future onward transmission to or use by Mr Gersamia). Thus, through further disclosure applications in the United States (this time from Deutsche Bank), the claimants have established that between 21 April and 2 May 2011, KD Shipping made five payments from its Cypriot bank account totalling US$ 296,900, which were paid into Mr Supranonok's UK account at HBOS. As submitted by Mr Berry, Mr Gersamia's attempt to explain away this further coincidence is incredible and wholly unsupported by any evidence. It is also inconsistent with the banks being told that the payments to Mr Supranonok were for "*consulting*".

478. Between about 7 June and 28 December 2011, Templewood also transferred the equivalent of approximately US$ 1.5m to Tremlett, a company which was notionally owned by Mr Gersamia's mother. Mr Gersamia's evidence is that this was part of his investment strategy on behalf of Belux. In my judgment, this is plainly untrue because there is no evidence at all of any of these monies actually being used for any sort of investment. On the contrary, there is ample evidence (obtained from Tremlett's Swiss bank) of Mr Gersamia treating these funds as his own, including using them to pay his lawyers, SCA (for this action) and Burges Salmon (for advice in respect of property and trusts – of which he claims to have none); and funding the credit card, in his father's name, to pay for a lavish lifestyle including more than US$ 72,000 on travel and holidays; more than US$ 34,000 on shopping and luxury goods; more than US$105,000 on restaurants, nightclubs and brothels; more than €27,000 at one nightclub in Sardinia on a five-day trip, immediately after his suspension from Threadneedle on 5 August 2011, for which purpose he also hired a Lamborghini and a Maserati; and more than US$ 30,000 in one night at a Moscow restaurant, on 11 December 2011, immediately after he had discovered that proceedings had been launched in relation to the Argentinian Warrants Fraud. (Such expenditure appears to have continued even <u>after</u> the freezing order made by Flaux J on 1 March 2012.)

479. The biggest single transfer from Tremlett was a so-called "loan" of £250,000 (about US$ 400,000) to M Oil. As to M Oil, Mr Gersamia initially refused to identify its beneficial owner; only when cross-examined as to his assets did he accept that it is a company owned and controlled by his cousin, a Mr Mgaloblashvili. In April 2012, Mr Gersamia admitted that he did no due diligence in relation to the company (purportedly because it was not necessary or appropriate given that he knew the beneficial owner); and said that he would provide a reference from BNP Paribas "*shortly*"**.** No reference has been forthcoming. Ince & Co. (acting for M Oil) have, on the other hand, said that M Oil <u>did</u> conduct (unspecified) due diligence in advance of the transaction, which revealed "*nothing untoward*". The 'loan' document itself is odd, in that (i) it is based on the same template as the Arcutes-Belux Loan Agreement (ii) the signature of each party is on a separate page in which the text itself is different; and (iii) the signature for M Oil is clearly a copy or facsimile. The loan was unsecured and fell due for repayment on, on its face, 26 March 2012, but has still not been repaid. Mr Mgaloblashvili apparently told his bank on 11 August 2012 that he was asked by Mr Gersamia to "hold" the payment until further notice (although Mr Gersamia had said in his asset cross-examination that there had been no repayment until the claimants undertook to pay M Oil's solicitors' fees). Since March 2012, Mr Mgaloblashvili has funded £300,000 of Mr Gersamia's legal costs, with payments being made from the very branch of BNP Paribas to which the M Oil 'loan' proceeds were transferred in January 2012. The day before the trial, the solicitors acting for M Oil, Mr Gersamia and Otkritie agreed that M Oil would pay US$ 250,000 to be held by S C Andrews pending judgment.

480. In addition to these and many other payments from Templewood which are, in my judgment, impossible to characterise as 'investments', it is noteworthy that there are two large transfers (in particular the payments of US$ 1m to an account at Liberty Bank (in Georgia) and US$ 3m to Jaspen) which took place at virtually the same time in early December 2011. This was shortly after Mr Gersamia realised that the claimants had discovered the frauds (and, in particular, the Arcutes transfer to Belux). The day before the payment to Liberty Bank was made i.e. on Wednesday 7

December, the claims (and freezing orders) against Mr Urumov were expanded to include the Argentinean Warrants Fraud. The following day, the claimants served Mr Urumov with the further claim and order and also, importantly, obtained a freezing order against Belux in Hong Kong. That day (8 December), the records show that Mr Gersamia spoke to Dolidze before travelling to Moscow for the weekend (where he spent more than €35,000 of the fraud proceeds at a restaurant). Mr Gersamia returned to London on Monday 12 December and began what would appear to be a desperate attempt to hide the rest of the moneys (as set out further below). This included various visits, on 12 and 15 December, to Butterfield Private Bank in London. Mr Gersamia was also in contact with Mr Urumov that week, as can be seen from the text message Mr Urumov sent to Mr Gersamia on 13 December.

481. As to the first of these large transfers i.e. US$ 1m paid to Liberty Bank, Mr Gersamia's evidence is that this was an 'investment' for Belux, to take advantage of the interest rate of around 9%. Given my earlier conclusions with regard to Belux, I do not accept that evidence and the timing of such supposed "investment" strongly suggests that it was simply a transfer designed to put the monies out of reach. Mr Gersamia claims that the US$ 1m remains there, although he has been unable to produce any more recent statement than December 2011, and this appears at least doubtful. When cross-examined as to his assets on 15 February 2013, Mr Gersamia said that he had requested copies of his Liberty Bank statements on numerous occasions. More recently, he said that the bank in Georgia was not co-operating with him and has refused to provide statements to him. The claimants suggested a joint letter to the bank which seems a sensible proposal although (unless the position has changed recently) this has been repeatedly ignored by Mr Gersamia. In any event, it remains uncertain as to what has happened to these monies.

482. As to the second of these large transfers i.e. US$ 3m paid to Jaspen, Mr Gersamia's evidence is that this formed part of an "investment" of some US$ 3.4m in corn futures through Jaspen, based in Ukraine of which this sum of US$ 3m happened to have been demanded and paid urgently on 12 December 2011. I do not accept that evidence for the following reasons. First, the background to Jaspen and its relationship with Mr Gersamia is, to say the least, murky. Jaspen is, it is said, run by Mr Gersamia's "*close friend*", Mr Supranonok. The closeness of the relationship between Mr Gersamia and Mr Supranonok is illustrated by the highly personal (and often obscene) nature of the Bloomberg 'chat' between the two men; various transfers of other monies by Mr Gersamia to Mr Supranonok; and holidays taken together including one in March 2012 to Panama, which was funded from the fraud proceeds, with expensive air tickets being paid for by Mr Gersamia using his father's Tremlett credit card just after Mr Gersamia was joined to the action and his assets frozen and around the very time when he was apparently setting up a new Panamanian holding structure for his assets.

483. Second, the suggestion that Mr Gersamia would 'invest' such a large sum of money in corn futures, with which there is no suggestion he had any previous experience, is implausible to say the least. He has disclosed no documents showing any communication with Jaspen about (i) the opening of a trading account (other than an incomplete copy of an Agency and Services Agreement seemingly dated 5 May 2011 (the "ASA"); (ii) the choice of asset to be traded; or (iii) the particular trades he supposedly instructed Jaspen to conduct. This is despite the ASA expressly providing for written trade confirmations to be issued and counter-signed for each separate trade

(see cl. 3.8). Equally, he has produced no documents showing any communication with Belux, on whose behalf this massive and disastrous investment was supposedly made. The suggestion now is that losses over US$ 3m were incurred in October 2011, despite Templewood having by then only advanced US$ 340,000 to Jaspen. The balance, of exactly US$ 3m, was demanded and paid two months after the losses had supposedly being incurred. More specifically, on 12 December 2011, Mr Gersamia told Clariden Leu that US$ 3m was in respect of an "*urgent*" margin call from Jaspen to be implemented the same day. However, that explanation for the urgency is difficult to accept given that two months had already passed since the losses had, on Mr Gersamia's evidence, been crystallised. Mr Gersamia belatedly produced a purported Promissory Note dated 1 September 2011 (with a maturity date of 30 December 2011) in an amount of exactly US$ 3m. However, it seems to me that this is almost certainly a fake and, as submitted by Mr Berry, probably a recent concoction. As submitted by Mr Berry, this supposed Promissory Note would appear to serve no real purpose: it gave Jaspen no more security than it already had under the ASA. Further, the date is inexplicable. Even on Mr Gersamia's own evidence, he could not have known on 1 September that the losses on these corn futures, which crystallised only on 10 October, would (with fees of US$ 199,975) amount to exactly US$ 3.34m, leaving him *exactly* US$ 3m in debt to Jaspen; and, in any event, he claims only to have instructed Jaspen to trade the corn futures at the end of September or beginning of October 2011 and that the losses only escalated dramatically on his account during the week from 4 to 11 October. In addition, the documents reveal other transfers (in particular US$ 120,000 on 21 June, US$ 200,000 on 2 September and US$ 20,000 on 4 October – this last payment having been transferred almost immediately by Jaspen to Mr Gersamia's grandfather) which at the very least strongly suggest that Mr Gersamia was simply using Jaspen as a conduit to pass money to others on Mr Gersamia's behalf; and it would also appear that between about 10 and 12 December, Mr Gersamia was preparing other fake invoices to justify other payments. For all these reasons, I reject Mr Gersamia's evidence with regard to this supposed investment in corn futures through Jaspen. In my judgment, the payments to Jaspen including in particular the sum of US$ 3m transferred on 12 December 2011 was a money laundering exercise designed to park and hide a large part of the fraud proceeds with a trusted third party.

484. Finally, I should mention that there is ample other evidence to justify the conclusion that Mr Gersamia is now 'recycling' the monies he made disappear (to which the claimants have proprietary claims) in order to fund his own legal costs; and that, as submitted by Mr Berry, his written and oral evidence about his assets, given on oath, contain numerous lies. However, it is unnecessary to lengthen this already very long judgment to examine these matters in detail. For present purposes, it is sufficient to say that all the matters referred to above with regard to the flow of monies fortify and reinforce my conclusion that Mr Gersamia was directly involved in the Argentinean Warrants Fraud.

485. For all these reasons, it is my conclusion that Mr Gersamia is liable for US$ 150,933,750 by way of damages for conspiracy and/or equitable compensation and/or dishonest assistance and/or an account. Alternatively, Mr Gersamia is liable for US$ 10.1m as damages and/or equitable compensation and/or an account for knowing receipt.

Templewood

486. Given everything I have said above, it follows that Templewood is liable for damages and/or equitable compensation in the sum of US$ 6.9m and/or an account on the basis of dishonest assistance of breaches of fiduciary duty on the part of Messrs Kondratyuk, Urumov and Pinaev; alternatively knowing receipt.

Mr Gersamia Snr

487. The claim advanced against Mr Gersamia Snr is for damages and/or equitable compensation in the sum of US$ 2.75m and/or an account on the basis of dishonest assistance of Mr Urumov's breach of fiduciary duty and/or knowing receipt. That figure of US$ 2.75m appears in Figure 8. It is in effect part of the fraud proceeds which Arcutes paid to Belux and which were then distributed by Belux. It is the total of three figures viz (i) the sum of US$ 2.3m which he received from Belux on 8 April 2011 and then passed on to Bexerton (the company beneficially owned by Mr Gersamia Snr); and (ii) the further sums of US$ 250,000 and US$ 200,000 paid by Templewood to Mr Gersamia Snr on 26 April 2011 and 1 June 2011 respectively. As also appears from Figure 8, the first amount was subsequently transferred by Bexerton to Airdale (the company beneficially owned by Mr Gherzi) on 17 May 2011 together with a further US$ 200,000 making up the total of (approximately) US$ 2.5m.

488. As to the underlying facts, I have already stated certain conclusions in the context of dealing with Mr Gersamia which I do not propose to repeat. For present purposes, it is sufficient to say that I regarded him (i.e. Mr Gersamia Snr) as a dishonest witness (like Mr Gersamia) who made a number of obvious and deliberate lies including (i) his assertion that it was "normal", and not suspicious, for Mr Gherzi to be paid back US$ 2.5 million of the "loan" or "investment" his employer (a bank) was supposedly making to Belux; (ii) his evidence that he was still providing "consultancy" services to Belux pursuant to the Gersamia Referral Agreement; (iii) his denial (or at least purported lack of memory) that he had forged his son's signature for the purpose of procuring from Clariden Leu a payment of US$ 200,000 of the fraud proceeds to his personal bank account; and (iv) his explanations with regard to his purported inability to provide proper disclosure. Mr Gersamia Sr also admitted that he knew his son used a credit card issued in his (the father's) name, although (when he eventually answered the question) he claimed not to know whether the credit card issuer knew this; and that there was no genuine sale of the land, as suggested in the fake contract he said he prepared (although he incredibly denied knowing that it was going to be presented to a bank to justify Templewood's receipt of the fraud proceeds).

489. For all these reasons, it is my conclusion that Mr Gersamia Sr knew that the monies paid by Arcutes to Belux and (in part) to Templewood were monies which were the proceeds of fraud arising out of Mr Urumov's breach of fiduciary duty or at least that those entities were not entitled to (and not entitled to deal with) such monies and that he is therefore liable for damages and/or equitable compensation in the total sum of US$ 2.75m received by him and/or Bexerton (his company) via Belux and Templewood and/or an account on the basis of dishonest assistance alternatively, at the very least, knowing receipt.

490. I should mention that with regard to both Mr Gersamia and Mr Gersamia Sr, Mr Casella raised particular points with regard to quantum in a written note after close of

final oral submissions. In particular, he submitted that any amounts recoverable in principle against Mr Gersamia must be reduced because of the terms of the settlement agreement between Otkritie and Mr Gherzi; and that any claim against Mr Gersamia Sr must be limited to no more than US$ 250,000 because the sum of US$ 2.5m which he received was in fact received for and on behalf of Mr Gherzi. It is very regrettable that these points were not raised – as they should have been – prior to close of final submissions. However, absent agreement, I am prepared exceptionally to consider these points at a separate hearing.

Part X: The Jemai defendants

Mr Jemai

491. As already summarised above, the claims against Mr Jemai are advanced on various bases viz breach of contract, dishonest assistance of breaches of fiduciary duty by Mr Urumov, Mr Pinaev and Mr Kondratyuk, conspiracy, deceit and knowing receipt. The remedies sought are damages and/or equitable compensation in the sum of US$ 150,933,750 alternatively US$ 35.8m alternatively US$ 15.8m and/or an account. Before considering these various claims, these figures require some explanation. The first of these figures i.e. US$ 150,933,750 represents, of course, the loss which I have already found was suffered by Otkritie as a result of the Second Trade and, in broad terms, the claim in support of such figure is founded on the claimants' allegation (supported by the evidence of Mr Kondratyuk) that Mr Jemai was an active and dishonest participant in the Second Trade. Again in broad terms, the alternative claim for US$ 35.8m is based upon what the claimants say is Mr Jemai's involvement in relation to the receipt and dissipation of Mr Kondratyuk's (gross) share of the fraud proceeds and which was channelled through Jecot; and the further alternative claim for US$ 15.8m is based upon what the claimants say is Mr Jemai's own share of the fraud proceeds which Mr Kondratyuk in effect agreed to pay Mr Jemai out of his (gross) share. Again, these claims are supported by the evidence of Mr Kondratyuk. In particular, it is the claimants' case, consistent with Mr Kondratyuk's evidence as noted above, that he (Mr Kondratyuk) agreed with Mr Jemai that his share of the fraud proceeds would be kept for the time being by Mr Kondratyuk whilst he (Mr Jemai) and his mother (Mrs Jemai) planned how to launder his (Mr Jemai's) share through Jecot and various banks with which the Jemais had contact (including Baltikums Bank in Latvia and the Bank of Azerbaijan). As appears below, it is the claimants' case that this is indeed what happened.

492. As to these claims, there is no doubt, as I have already described above, that Mr Jemai was directly involved in the booking of the buy side of the Argentinean Warrants Fraud from Adamant which led to the payment by OSL of the grossly inflated price for these warrants and the loss to OSL of US$ 150,933,750. There is equally no doubt that he was also directly involved in the internal booking of what was, in truth, the phantom sale of the warrants to Threadneedle. Mr Smith readily accepted that these facts were indisputable. He also accepted and indeed positively asserted that Messrs Kondratyuk, Urumov and Pinaev all made very serious amounts of money i.e. millions of dollars each from the Sign-On Fraud; and that Mr Kondratyuk was one of three persons who directly owned the company Arcutes which received US$ 120m from the alleged fraud in relation to the Second Trade. Although Mr Smith did not formally admit the involvement of Mr Urumov and Mr Pinaev in the Argentinean Warrants Fraud, he did not seek to suggest otherwise.

493. However, in essence, Mr Smith submitted that Mr Jemai acted innocently throughout on the instructions of Mr Pinaev; that his involvement was subsidiary to the involvement of other colleagues at Otkritie (including Ms Melnikayte and Mr Mufti) who were equally mistaken and misled about the nature and pricing of the Argentinean Warrants; that it was Mr Pinaev who obviously managed to persuade Mr Bojidar Kounov, the Managing Director of Adamant, to act as a switch with a price in US$ based on a US$/ARS exchange rate of 1:1; that it was Mr Pinaev who then completed the Second Trade; and that Mr Jemai then entered the tickets for the trade under the instructions of Mr Pinaev and actually mistakenly entered the trade in ARS when creating the ticket for the trade which is inconsistent with the claimant's allegations. In effect, it was Mr Smith's submission that Mr Jemai was an innocent dupe.

494. In support of such submission, Mr Smith advanced a number of detailed points which can be summarised as follows.

495. First, Mr Smith submitted that the court should completely reject Mr Kondratyuk's evidence not only for reasons which I have already summarised earlier in this judgement and which it is unnecessary to repeat but also because such evidence was, in effect, part of a strategy deliberately decided by Mr Kondratyuk falsely to implicate Jecot and the Jemais. In summary, Mr Smith submitted that such decision can properly be inferred for the following reasons:

i) On 7 March 2012, Mr Kondratyuk formally decided that he would admit money-laundering in the Swiss proceedings but he did <u>not</u> at that stage implicate the Jemais or Jecot.

ii) Although Mr Kondratyuk denied that he was placed under pressure falsely to implicate Jecot, the fact is that when he was in prison, he attended a number of meetings with representatives of the claimants during the summer of 2012. The claimants have prevented the court from receiving evidence in relation to those meetings relying on without prejudice privilege.

iii) Mr Kondratyuk had to settle with the claimants if he was to be able to have his guilty plea accepted via the Swiss prosecutor and avoid languishing in prison awaiting full trial with the other defendants at some indeterminate point in the future.

iv) Mr Kondratyuk originally told the Swiss authorities that he was frightened of the managers and owners of Otkritie. Although he said that this was a lie and part of the "strategy" devised by the defendants, it has the ring of truth.

v) By the end of 2012, Mr Kondratyuk had every reason to be desperate to settle with the claimants as they had not only obtained a worldwide freezing injunction against him and his sister Ms Demakova but obtained judgment in default against both of them viz against Ms Demakova on 16 July 2012 making her liable to restore the proceeds of fraud as well as making her personally liable for US$ 19m and against Mr Kondratyuk on 27 September 2012 making him personally liable to restore the US$ 36.4m received by him and pay monetary compensation in the sum of US$ 183m.

vi) Mr Kondratyuk apparently settled with the claimants on 25 January 2013 which paved the way for his plea-bargain with the Swiss prosecutor which was entered on 26 March 2013. Creating a role and reward for Mr Jemai minimised Mr Kondratyuk's own role and reward for the Second Trade. Instead of having to accept that he received US$ 36.5m, he was able to shift more than US$ 15m of the benefit and therefore the blame away from himself and on to Mr Jemai which one would expect would have had a significant impact on his sentence in the Swiss proceedings as would have been known to Mr Kondratyuk. Indeed, the result of Mr Kondratyuk's plea-bargain was a much reduced prison sentence and made him eligible for release on 27 March 2013 after only one year and four months in prison. This also made it feasible or at least easier for Mr Kondratyuk to settle the claimants' case from the assets he had available to him.

vii) In any event, Mr Kondratyuk's evidence that he agreed in effect to pay Mr Jemai more than US$ 15m out of his share of the fraud proceeds is demonstrably false. In particular, Mr Smith submitted that the evidence shows that although this money was initially paid to Jecot, Mr Kondratyuk made a number of attempts in effect to claim this money back as his own which is inconsistent with the claimants' case.

viii) The Settlement Agreement between the claimants and Mr Kondratyuk imposes a contractual obligation on Mr Kondratyuk to use his *"best endeavours"* to secure the repayment or recovery of the *"Jemai payment"* which is said (in Recital (J)) to be the amount of US$ 15m.

ix) The circumstances in which Mr Kondratyuk came to sign his witness statements are entirely unsatisfactory. The statements were produced when Mr Kondratyuk was still in prison and although he said in evidence that at that time all he had at his disposal was "my head", this is "frankly absurd". Further, as already noted, all three witness statements are in English but it was plain that when giving evidence his English was very limited.

496. Second, Mr Smith submitted that it was inherently improbable that Mr Jemai or any person would carry out a serious fraud of this kind and that such inherent improbability is especially true in the case of Mr Jemai and the circumstances of this case for him. In that context, Mr Smith relied upon a number of matters including Mr Jemai's youth; the fact that this was his first serious job; the fact that, contrary to the claimants' case, Mr Jemai was not a "trader" but simply an "assistant" and although he had what was called a "traders' login", this was simply a "necessity" given that he was preparing tickets and doing other tasks on Bloomberg like (for example) Ms Melnikayte; his enthusiasm to learn and advance in his new career; his admiration for and trust in his work colleagues; the fact that he was not a seasoned fraudster and indeed the absence of any suggestion whatsoever that he has any past misdemeanours of any kind; that the theft of some US$ 160m from an employer is not an entry level crime but the work of a career fraudster and/or somebody who has serious reasons to be disaffected with his workplace which Mr Jemai was not. Thus, Mr Smith asked rhetorically: why would a tight knit group of colleagues and friends -- on the claimants' case, a group who had committed numerous frauds together -- who would be the brains and organisers of a massive and complex fraud choose to reward a

young, inexperienced and new recruit to the bank and then pay him a massive sum of money from the spoils of the fraud?

497. Third, Mr Smith submitted that a close analysis of the relevant events concerning both the First and Second Trades showed that Mr Jemai played a largely administrative and subservient role in such trades; and that he accepted the explanations which emanated from Mr Pinaev as did other individuals who were employed in the middle and back office. In particular, Mr Smith submitted that the central explanation given by Mr Pinaev to a number of people was that, outside Argentina, the Argentinean warrants were traded in and settled in dollars irrespective of their designated Peso denomination; that the 1:1 US$/ARS exchange rate which has loomed so large in much of the claimants' case is an interesting feature that is ultimately a red- herring; that according to Mr Pinaev's instructions the 1:1 rate was to be used as a device for ensuring what he said was the correct US$ price which could be entered into the bank's records and systems; and that it cannot be seriously suggested that any representations made by Mr Jemai (or indeed anybody else) contained a representation relied on by the bank that the prevailing rate was 1:1. Indeed, Mr Smith submitted that the opposite is true: the sequence of events showing just how many of the bank's personnel were all aware that this was not the rate.

498. Mr Smith advanced these submissions most persuasively but, subject to one important point, I am unable to accept them for the following reasons.

499. First, seeing and hearing Mr Jemai give evidence, I readily accept that he was or at least appeared to be very different from (say) Mr Urumov, Mr Kondratyuk and Mr Pinaev. He was certainly younger than any of these individuals. He lacked their charisma and was much less confident. His salary was relatively low: some 50,000 roubles (equivalent to approximately US$ 1,000) per month when he joined Otkritie in 2010, increased to 180,000 roubles (approximately US$ 3,500) per month in the Spring of 2011. Even with bonuses, his salary package was peanuts compared to those of Mr Urumov, Mr Pinaev and Mr Kondratyuk. My general impression is that he was, in effect, in thrall of them - ready to do their bidding. It is unsurprising that Mr Pinaev referred to him as the "little monkey". It is plain that he could hardly pay for his own living expenses during this period and depended on the generosity of others including his so-called friends (e.g. Mr Pinaev and Mr Kondratyuk) and his mother. In truth, it seemed to me that Mr Jemai was an individual driven by greed, desperate to be "one of the big boys" and to live the lavish lifestyle that they all enjoyed - as was demonstrated by the fact that he decided to splash out and buy a Ferrari with the monies which he subsequently received in 2011. I agree that this picture might be said to lend at least some support to Mr Smith's general submission that Mr Jemai was an innocent dupe. However, I do not accept that it was inherently improbable that he would become involved in a dishonest fraud – on the contrary, the general characteristics which I have identified might be said to suggest the opposite. Nor do I accept that there is any real force in Mr Smith's rhetorical question: as submitted by Mr Berry, it seems to me that there was a very real advantage to the other fraudsters to have someone like Mr Jemai as part of the team who would, in effect, be the person who would pull the trigger; and whom they could all blame if everything went wrong. Further, it is highly relevant, in my view, that in the months after Mr Jemai joined Otkritie, he developed what was obviously a close relationship not only with Mr Kondratyuk but also with Mr Urumov and Mr Pinaev. In particular, he generally

attended the lavish parties – and, as I have said, also went skiing with Mr Kondratyuk in the days immediately preceding the Second Trade. Given such a close relationship, it seems to me somewhat unrealistic to suppose that Mr Jemai was totally unaware of the massive fraud that was shortly due to be implemented – although I accept that this is somewhat speculative. Be all this as it may, it seems to me that the right approach is to consider Mr Jemai's position having regard to the relevant events which I have already described and the evidence concerning his particular role and involvement in such events and the subsequent use made of the fraud proceeds. In that context, I propose, at least initially, to put on one side the evidence of Mr Kondratyuk.

500. Second, as set out above, I have already concluded that Mr Jemai has given dishonest evidence or, at the very least, that his evidence should be rejected on a number of important points: see, in particular, paragraphs 201, 269, 270, 274, 300, 303, 320, 325, 326, 350 and 359 above. At the risk of some repetition, the conclusion which I have reached is that, as submitted by Mr Berry, he made a series of what can only be described as blatant lies – both to the Swiss prosecutor and in this court. In particular:

i) I do not accept the general thrust of his evidence that he was not a trader (junior or otherwise) who therefore knew almost nothing about trading. This was contradicted not only by Mr Kondratyuk (whose evidence I put on one side) but also by Mr Pinaev as well as by his colleagues (including Messrs Mufti and Gherzi) and by the contemporaneous documents (many disclosed at his request after he had committed himself to his story) showing his increasing role within Otkritie and his early active involvement in trading even though such trading may not have been extensive and been carried out under the supervision of Mr Pinaev. Even putting on one side the question as to whether or not Mr Jemai was a "trader" in the full sense of that word and accepting fully that he certainly did not have the experience of someone like Mr Pinaev, I have no doubt that by (say) February 2011, he well understood at least in general terms the operations necessary to carry out trades in relation to securities such as the Argentinean warrants including the ticketing system. His evidence suggesting otherwise was in my view disingenuous.

ii) Mr Jemai's denial of any recollection of the important email from Ms Mikhailova of 1 March 2011 and of any participation in any discussions with her was, in my view, also disingenuous. The documentary record shows this to be completely untrue. He received her email more than once, including to his private account; and went to see Ms Mikhailova to speak to her about this crucial message, about which he spoke to both Mr Pinaev and Mr Urumov. In my judgment, it is not credible that he had no recollection of these events.

iii) I do not accept his evidence in cross-examination that he did not know what currency was represented by the initials "*ARS*"; and that he was unaware that one Argentinean peso was not worth the same as US$ 1.

iv) I do not accept Mr Jemai's denial that he had knowingly forged (or procured the forgery) of Mr Sergeev's signature on the trading agreement between Otkritie and Adamant to enable the fraudulent trade to take place. I have already dealt with this earlier in this judgment and I do not propose to repeat what I have already said save to emphasise that this is, in my view, an

important point – it shows Mr Jemai forging (or procuring the forgery of) Mr Sergeev's signature in order to enable the deal to proceed.

v) I do not accept Mr Jemai's (original) evidence that he was not in Latvia over the weekend of 26-27 March 2011 when the account at Baltikums Bank for Fanteks Consulting Ltd ("Fanteks") was opened shortly after the fraud. This was inconsistent with the contemporaneous documents including not only the bank's documents but also Mr Jemai's own Bloomberg chats.

vi) I do not accept Mr Jemai's denial of knowing or ever communicating with anybody from Quickline brokers; and specifically of knowing or ever speaking to Mr Kucherenko from that firm. This is inconsistent with the contemporaneous documents including phone records showing many calls and texts between Mr Jemai and Mr Kucherenko in June, July and August 2011.

vii) I do not accept Mr Jemai's evidence that he believed that there was a forward sale of the warrants to Threadneedle in place as of March 2011. That is again inconsistent with the contemporaneous documents which show that he was offering the warrants for sale to other parties in June 2011 (e.g. Raffeisen).

viii) I do not accept Mr Jemai's denial that he knowingly deceived the Otkritie back office when he sent them details of the proposed sale of the warrants via Tullett Prebon on 1 August 2011 in US$ at a rate of 1:1 when he had just entered a ticket showing an exchange rate of 4:1.

ix) In addition to the forgery of Mr Sergeev's signature, Mr Jemai also showed himself willing to sign fake or sham documents or provide other false information, which he knew would be provided to and relied upon by others including auditors, brokers and banks including (i) the Jecot-Jemai loan document dated 7 September 2010, admitted by Mr Jemai to be a sham, and evidently intended to deceive Interactive Brokers as to the source of the money used by the Jemais on their broking system (which in fact came from the fraud proceeds; (ii) the Lormos Baltikums bank account statement, showing an opening credit from Fanteks referenced to a "*sub agent agreement*", admitted to be false by Mr Jemai; (iii) the Fanteks Baltikums bank account statement, showing credit from Tess Group referenced to a "*Securities Purchase Agreement No 72;5 DD 16/10/11*" although, as Mr Jemai admitted, there was none between Tess and Fanteks.

501. Third, as I have stated and as Mr Smith accepts, Mr Jemai was directly involved in the making of both the First and Second Trades as I have already described. The case advanced on his behalf is that he simply did that innocently on instructions of Mr Pinaev. However, that is difficult, if not impossible, to accept if only because he has given mutually inconsistent explanations of who gave him such instructions when he was asked questions about this after the balloon went up. Initially, Mr Jemai said it was Mr Urumov who gave him the instructions. A few days later he said that he could not remember who had given him instructions. Finally, he said that it was Mr Pinaev who gave him the instructions. In my judgment, the most likely explanation for these different versions of who gave Mr Jemai instructions is that, contrary to Mr Jemai's present case, he did not act innocently on the instructions of Mr Pinaev but that Mr

Pinaev and Mr Urumov were in effect acting together with Mr Jemai as part of the fraudulent conspiracy.

502. Fourth, it seems to me important – and indeed potentially crucial – that following the receipt of the e-mail from Ms Mikhailova at 11.08 London time on 1 March and despite Mr Smith's submission to the contrary, any person in the position of Mr Jemai would know that what she said in that e-mail was true. Be that as it may, Mr Smith's response is that the subsequent telephone conversation between Mr Pinaev and Mr Jemai a few hours later shows that Mr Jemai did not act dishonestly; that, on the contrary, what happened in that conversation was that Mr Pinaev bullied Mr Jemai into following his instructions, in effect pulling the wool over his eyes and giving him ammunition to go back to Miss Mikhailova; and that, if anything, this confirms that Mr Jemai was an innocent dupe. Mr Berry accepted that on its own that conversation could be interpreted in that way. However, as submitted by Mr Berry, it seems to me that Mr Jemai stood in a different position from the other individuals referred to by Mr Smith; and that notwithstanding what Mr Pinaev was telling Mr Jemai, no person in the position of Mr Jemai could honestly have believed that what Mr Pinaev said was true. Even on Mr Jemai's own evidence, it seems to me that he simply agreed to follow Mr Pinaev's instructions and was dishonestly reckless (in the legal ie *Derry v Peek* sense) as to whether it was true or not. Further, again as submitted by Mr Berry, if Mr Jemai was innocent, it seems inconceivable that Mr Pinaev would have trusted him to tell this lie to the middle office. The same points arise subsequently viz. later on the same day in the course of the discussions with Ms Sharipova; when Mr Shamarin raises his query about prices including currency; and, on 9 March, when Mr Jemai drafted the response to Mr Shamarin's email (including the statement that: *"For this security, Argentine peso prices are strictly for the local market"* which was obviously untrue as Mr Jemai must have known).

503. Fifth, it is common ground that Mr Jemai physically made the inward trades on the buy side and entered the tickets with Mr Kounov of Adamant. In my judgment, it follows from everything I have said that in so doing he knew that the price entered for such trades was false or at the very least was dishonestly reckless as to whether such price was true or false. Even on the assumption that Mr Jemai was just an "assistant", it seems to me necessarily to follow that at the very least, this exercise demonstrates that he knew the process necessary for booking and ticketing the trades. However, if Mr Jemai was honest, what follows is then inexplicable i.e. what he does – almost immediately – is to put into the system two purported "sell" tickets (for 800,000 and 850,000 warrants) for the supposed sale to Threadneedle. According to Mr Jemai this was done on Mr Pinaev's instructions. However, even putting on one side the fact that Mr Pinaev denies giving such instructions, there were no accepted tickets with Threadneedle as Mr Jemai well knew: there was, in my judgment, no honest basis for Mr Jemai to put into the system these two "sell" tickets. Thus, in my view, it must necessarily follow that Mr Jemai knew that there was no sell contract with Threadneedle or at the very least that he was dishonestly reckless as to whether such sell contract(s) existed or not. The same points apply *a fortiori* when on 14 March the sell tickets were changed.

504. Sixth, it is, in my judgment, significant that after Mr Jemai joined Otkritie and before the Second Trade, he set up the company which I have already referred i.e. Fanteks. That name i.e. Fanteks is phonetically very close to Vantax which, as referred to

below, was, in my view, plainly utilised to launder money. Mr Jemai's evidence was that such similarity of name was coincidental which I find difficult to accept. Fanteks is a New Zealand company registered in the name of Jevgenijs Parsins (which is another name used by Mr Jemai, using the Latvian version of his forename and the family name of his biological father). Originally, Mr Jemai told the Swiss prosecutor that Fanteks was some kind of partnership with a Mr Zen Pang (which Mr Peng himself denied). However, Mr Jemai has now admitted that this is his company. Further, a few weeks after the Second Trade, Mr Jemai went to Latvia to open a bank account at Baltikums Bank in the name of Fanteks. Despite initial assertions – or at least suggestions - by Mr Jemai that he did not travel to Latvia at this time, the contemporaneous documents plainly show that this bank account was opened by Mr Jemai on or about 28 March 2011 having given the bank false information about himself and his business. In my judgment, this timing cannot be a coincidence: the overwhelming inference is that Mr Jemai set up Fanteks and opened the Baltikums bank account for the purpose of receiving his share of the fraud proceeds.

505. Seventh, it is my conclusion that, contrary to Mr Jemai's evidence, he did indeed receive his share of the fraud proceeds in the Fanteks account; and that he knowingly used this account for that purpose and to fund his newly-found lavish lifestyle. In particular, it seems to me that this is the overwhelming inference given (i) the apparently matching payments of US$ 400,000 (in fact, US$ 400,044) paid (out of the fraud proceeds received from Gemini) by Arcutes to Vantax on 21 March 2011 and the almost identical amount (in fact US$ 399,950) paid by Vantax to Fanteks shortly thereafter, i.e on 31 March 2011; and (ii) the absence of any other satisfactory explanation that these two virtually identical payments are not directly linked.

506. As to the circumstances relating to this payment of (say) US$ 400,000 by Arcutes to Vantax, I have already referred to the evidence of Mr Kondratyuk i.e. that it was in effect an advance payment of Mr Jemai's share of the fraud proceeds made at the request of Mr Jemai and agreed by Mr Kondratyuk pending further arrangements being made by Mrs Jemai to receiving the full amount of his share; and that Mr Jemai said he would speak to Mr Pinaev about this payment. Mr Pinaev's evidence was that he never arranged this payment; that it was rather arranged by Mr Kondratyuk who asked him and Mr Urumov to agree to make the payment; that the details of the Vantax bank account were provided by Mr Kondratyuk; that he (Mr Pinaev) was not aware that it was Mr Jemai or possibly his mother or sister who had asked for this payment of US$ 400,000 to be made to Vantax; and that he was not aware that Vantax was owned by Jemai family interests. In effect, Mr Pinaev denied (or at least refused to admit) that Mr Jemai had wanted this money as an advance of his share of the share proceeds. In any event, the contemporaneous documents plainly show that the actual instructions to the bank to make the payment were given by Mr Pinaev and that both Mr Urumov and Mr Kondratyuk agreed. At the very least, it is abundantly clear that the payment was made from the Arcutes account to Vantax's account with the knowledge and agreement of Mr Pinaev, Mr Kondratyuk and Mr Urumov.

507. The evidence of Mr Jemai (supported by Mrs Jemai and Ms Jemai) with regard to the payment of US$ 400,000 received by him is convoluted and not easy to understand. In essence, as set out in paragraph 81 of Mr Jemai's witness statement, Mr Jemai accepts that he received this amount from Vantax together with a further payment a few months later of US$ 100,000 (making at total of US$ 499,500); and as, appears from

Figure 9, it is common ground that these sums were paid by Vantax to Fanteks on 31 March 2011 and 17 May 2011 respectively. However, his evidence is that this money was not related in any way to the alleged fraud but was the repayment of an earlier loan of monies originally belonging to himself and Ms Jemai. In his final written submissions, Mr Smith sought to summarise, the evidence of the Jemais and, in particular, the case advanced on behalf of Mr Jemai as follows:

i) In autumn 2008 Jecot became very affected by the crisis and Mrs Jemai asked her children (Mr Jemai and Ms Jemai) if Jecot could borrow the childhood savings that Mrs Jemai had set aside for them since the early 90's, amounting to USD 446,500 , the "Parchine Loan" (Parchine is Mr Jemai's and Ms Jemai's birth surname).

ii) Mr Jemai and Ms Jemai naturally agreed and the money was transferred to Jecot from Credit Suisse accounts on 15 October 2008. The authenticity of the Credit Suisse statements is not challenged by the claimants.

iii) Jecot's accounting of 2008 registered the loan in 2008 as *'AVANCE PARCHINE'* with the balance of '(446,500.00)'.

iv) The contract to reflect the loan was signed some time later when Jecot required it for its accounting purposes.

v) Jecot's accounting records of 2009 had recorded Mr Jemai's and Ms Jemai's loan.

vi) When Jecot's situation improved Mr Jemai and Ms Jemai enquired about possibility of an early loan repayment with the purpose to invest in cotton and benefit from amazing market conditions.

vii) In January 2011 Mrs Jemai requested an allocation of cotton from Vantax (representing repayment of the loan to Mr Jemai and Ms Jemai).

viii) Mr Jemai and Irina Jemai gave to Mrs Jemai/Jecot a letter requesting the reimbursement in cotton.

ix) Cotton was allocated through Vantax.

x) Mr and Ms Jemai were told that they would have to pay TRR charges (customs tax, transport, certificates, etc.) of about US$ 50,000 in order to ship the cotton. Neither Mr Jemai or Ms Jemai themselves had this sum of money to pay up front.

xi) Mr Jemai asked Mr Pinaev for this amount who told Mr Jemai that he would be prepared to lend it to Ms Irina Jemai only if she guaranteed personally to reimburse it to him directly.

xii) Ms Jemai spoke to Mr Pinaev and he transferred her US$ 50,000 with reference "Loan".

xiii) However, it transpired that it was too late for the cotton to be purchased as it had been allocated to someone else and so Ms Jemai returned the money to Mr Pinaev in a matter of days.

xiv) The sum of US$ 499,950 was then paid by Vantax to Mr Jemai's Fanteks account for reasons explained by Mr Jemai and Ms Jemai. Some of the money was used some 4½ month later by Mr Jemai to purchase a Ferrari car as an investment, which upset his sister and mother.

508. In my judgment, this explanation is not credible for a number of reasons. First, it does not address the fundamental point arising out of the fact that the sum of US$ 400,000 received by Vantax from Arcutes on 21 March was plainly the proceeds of fraud (for the reasons stated above) and virtually identical to the sum paid out by Vantax to Fanteks on 31 March. Absent a satisfactory explanation as to why these two apparently matching payments so close in time were not linked, I do not accept that the monies received by Fanteks were not related to the fraud. In essence, the evidence of Mrs Jemai was that the payment from Arcutes to Vantax was in fact a loan by Mr Kondratyuk to Jecot but paid directly to Vantax so that it could be paid on to BNP Paribas on Jecot's behalf so that Jecot's Russian clients would not lose credibility with the bank due to the delayed payment; and that there was, in effect, no linkage between the sum received by Vantax from Arcutes on 21 March and the virtually identical sum paid on to Fanteks 10 days later on 31 March. I do not accept that evidence. Putting aside the evidence of Mr Kondratyuk and the apparent dispute between him and Mr Pinaev as to whether the decision to make the payment was that of Mr Kondratyuk or Mr Pinaev, it is plain from the contemporaneous documents that at the very least the original payment of (say) US$ 400,000 was made from the Arcutes Bordier account with the agreement of Mr Pinaev, Mr Urumov and Mr Kondratyuk. Given my earlier conclusions, it is thus plain, as I have said, that this money was part of the fraud proceeds. Therefore Mrs Jemai's explanation is not only inconsistent with the evidence of Mr Kondratyuk but at odds with the contemporaneous documents. Further, that explanation is, in my judgment, simply not credible given that the payment was made by Arcutes to Vantax so close in time i.e. within only a few days of the settlement of the Second Trade and on the very same day (i.e. 21 March) as the other first tranches were made by Arcutes to Sun Rose, Pleator and Firmly Oceans respectively.

509. Mrs Jemai's evidence that the sum of US$ 400,000 paid by Arcutes to Vantax was a loan is said to be confirmed by a loan agreement purportedly between Arcutes and Jecot (the "Arcutes-Jecot Loan Agreement"). On its face, the Arcutes-Jecot Loan Agreement is misdated and a very odd document. It was not included in the original dossier provided by Mrs Jemai to her lawyer and to the Swiss Police on 25 November 2011; and was only produced at a much later stage. In my judgment, the overwhelming inference is that it is a fake or a sham or both created by Mrs Jemai from pre-signed blank sheets probably after Mr Kondratyuk's arrest – a topic that I consider further below.

510. In summary, it is my conclusion that Mrs Jemai's explanation for the payment by Arcutes to Vantax is a deliberate lie; and that there is no satisfactory or credible <u>honest</u> explanation as to why Arcutes paid the sum of US$ 400,000 to Vantax.

511. Further, insofar as may be necessary, the explanation that the payment by Vantax to Fanteks was, in effect, by way of repayment of an earlier loan to Jecot is also not credible, in my view, for a number of reasons. First, such explanation is inconsistent or at least difficult to square with other evidence originally given by Mr Jemai that he did not know anything about a company called Vantax and that the Fanteks payments were consultancy commissions related to ore transactions. Second, the main document said to reflect the original loan is not contemporaneous (as is accepted by the Jemais) but, even on their case, was produced at a later stage and backdated (so they say) when it was requested by Jecot's auditors for accounting purposes. Third, although there is the other documentation referred to by Mr Smith apparently confirming the existence of at least some loan, it is, at least questionable that such documentation refers to this supposed loan; and, in any event, it would appear that Jecot's auditors refused to sign Jecot's accounts because *inter alia* most of the supposed loan contracts they requested had not been provided. Fourth, the Jemais' story is that early repayment of the loan was agreed because Jecot's financial situation had improved but this seems difficult, if not impossible to reconcile with other evidence which would indicate that Jecot borrowed CHF 50,000 from Ms Jemai in January 2011. Fifth, it seems at the least very odd that Mr Jemai and Ms Jemai wrote a formal letter for repayment. No metadata has been produced which might verify the date and authenticity of this document. There is an obvious suspicion that this document has also been created after the event to support the story. On its own, I accept that this point is somewhat speculative but, in my view, that suspicion is probably well-founded when taken together with all the other evidence. Further, there is no satisfactory explanation as to the pricing mechanism apparently contained in that document given the suggestion that the market was rising rapidly. Sixth, the Jemais' explanation of seeking and getting from Mr Pinaev the US$ 50,000 shipping costs is convoluted and inconsistent with other evidence. It would also seem to be a recent invention. Seventh, Ms Jemai accepts that she has never been repaid what she says was her "share" of the original loan made from her childhood savings. That again seems very odd (to say the least) if this story were true. Finally, in my judgment, the overwhelming likelihood is that the further payment of US$ 100,000 made by Vantax to Fanteks on 17 May 2011 was the transfer of a "bonus" Mr Kondratyuk and Mr Jemai had dishonestly procured Otkritie to pay to Mrs Jemai's account at BSI.

512. In summary, my conclusion is that this sum of US$ 400,000 was part of the fraud proceeds and was paid by Arcutes to Vantax and then on to Fanteks ultimately for the benefit of Mr Jemai; that it represented Mr Jemai's share of the fraud proceeds; and that it was received and then spent by him to fund a newly-found lavish lifestyle knowing that it represented part of the fraud proceeds. That conclusion is, of course, consistent with the evidence of Mr Kondratyuk but I should make plain that I have reached that conclusion independent of such evidence.

513. As already stated, the claimants go further. Relying on the evidence of Mr Kondratyuk, they say that in fact Mr Jemai's share of the fraud proceeds was much bigger viz. US$ 15.8m or US$ 15.4m; and that such share was in effect channelled through Jecot. I recognise that the claimants may well be right but I confess that I have found this point extremely difficult. In the event, I have concluded that the claimants have failed to establish that this is indeed the case and I therefore reject this part of the claim. This is so for the following reasons.

514. First, there is, in my view, much force in Mr Smith's submissions (which I have already summarised) that Mr Kondratyuk had and has very good specific reason to lie that the sum of money which his company, Firmly Oceans, received from Arcutes was, in effect to be shared with Mr Jemai.

515. Second, there is little, if any, satisfactory independent evidence to corroborate this part of Mr Kondratyuk's evidence and it seems to me that such evidence as exists is, at least, equally consistent with Mr Smith's submission that most if not all of the sum received by Firmly Oceans was for Mr Kondratyuk alone.

516. Third, it seems to me that the figures do not work – or at least it is difficult to fit the figures into a scenario where it was in effect agreed by Mr Kondratyuk that he would take responsibility for Mr Jemai's share and, on his evidence, pay him US$ 15.8/US$ 15.4m. I have already dealt with this in part. Mr Berry submitted that in fact the figures did work – in particular because a figure of approximately US$ 15m represented 10% of the total fraud proceeds which is, said Mr Berry, what had been agreed with Mr Jemai. However, that scenario does not fit with other evidence including Mr Kondratyuk's own initial evidence that all the main fraudsters (including Mr Jemai) were going to get the same i.e. US$ 20m out of US$ 120m which is, of course, substantially more than 10%. Moreover, I find it inherently improbable that Mr Kondratyuk would have agreed to take care of and pay such a large amount out to Mr Jemai. As stated above, Mr Kondratyuk's evidence is that after the Second Trade was settled, Mr Pinaev and Mr Urumov said that out of the fraud proceeds of US$ 120m received by Arcutes, they would have to pay US$ 10.1m to Mr Gersamia's colleague – although he (Mr Kondratyuk) says that he never learned who that was. This seems most improbable. In fact, as I have found, that amount i.e. US$ 10.1m was paid in effect to Mr Gersamia of which about US$ 2.5m found its way back to Mr Gherzi. It seems to me highly improbable that Mr Kondratyuk was not party to or at least aware, even in general terms, of such arrangements. If that is right, it seems very odd, indeed not credible, that Mr Kondratyuk would agree to pay Mr Jemai a sum in excess of US$ 15m out of his own share. That would mean that Mr Urumov and Mr Pinaev would each get and keep for themselves some US$ 36.5m whereas Mr Kondratyuk would only receive and be able to keep about US$ 20m. In my judgment, it is not credible that Mr Kondratyuk would agree voluntarily to such arrangement. One possibility is, of course, that Mr Kondratyuk was being cheated by Mr Urumov and Mr Pinaev; and I recognise that that is what Mr Kondratyuk now says that he thought was happening at the time. However, having seen and heard Mr Kondratyuk give evidence, it does not seem to me that he is the kind of person who might easily be cheated or fobbed off. On the contrary, it seems to me that the likelihood is that Mr Kondratyuk knew full well that the sum of US$ 10.1m subsequently paid to Belux was to be used to pay off Mr Gersamia and Mr Gherzi – although I fully accept that standing alone this is largely speculative.

517. Fourth, although there is no doubt, as appears from Figure 9, that Mr Kondratyuk paid over virtually the entirety of the fraud proceeds received by his company, Firmly Oceans, to Jecot's bank accounts at Credit Suisse (approximately US$ 29.1m) and BNP Paribas (approximately US$ 6.3m), such exercise is consistent with or at least not necessarily inconsistent with such monies being dealt with in that way for Mr Kondratyuk's own money-laundering or investment purposes rather than for the purpose of handing over a sum in excess of US$ 15m to or for the benefit of Mr

Jemai. I deal further below with the various supposed transactions which were made in relation to such transactions. It is right that as appears from Figure 9, a very large amount i.e. approximately US$ 20m was channelled from Jecot through Vantax to Mr Kondratyuk's sister (Ms Demakova) and I accept that this gives some possible credence to the argument that this represented Mr Kondratyuk's (net) share and that the balance which remained (i.e approximately US$ 15m) represented Mr Jemai's share; but, in my view, this is too simplistic.

518. Moreover, there is other evidence which, in my view, supports Mr Smith's argument that, in fact, Mr Kondratyuk regarded the entirety of this money paid to Jecot as, in effect, his own. For example, at the end of May/early June 2011, Mr Kondratyuk told Mr Belhia of BSI Bank that he expected to receive €30m – around US$ 43m at that time. Mr Smith submitted that this reflected exactly the sum of approximately US$ 36.5m that had been received by Firmly Oceans plus the US$ 6.3m sign-on fee fraud. As submitted by Mr Berry, I accept that the figures do not work exactly (or at least as exactly as Mr Smith suggested) but it seems to me that the general point made by Mr Smith remains generally sound. There are also further contemporaneous documents when Mr Kondratyuk requested or demanded the return of the money – although there was much dispute about the circumstances in which such documents came into existence. In addition, there is a series of voice-recordings of a meeting on 4 September 2012 between Mr Jemai and Mr Kondratyuk's brother (Mr Oleg Kondratyuk) in which the latter appears to ask for the return of Mr S Kondratyuk's money in suitcases of cash. Mr Smith submitted that these recordings were "deadly" to this part of the claimants' case because they plainly showed that, contrary to the claimants' case, Mr Kondratyuk regarded the money which had been transferred to Jecot as his own. For his part, Mr Berry submitted that disputed the authenticity of those recordings. In response, Mr Smith submitted that the veracity of such recordings was supported by the evidence of Mr Jemai's Swiss lawyer, M Miguel Oural – although Mr Berry submitted (by way of rejoinder) that this was not so or at the very least that M Oural's evidence did not support the factual case that Mr Kondratyuk had asked for the return of suitcases of cash. The resolution of these disputes is problematic.. For present purposes, it is sufficient to say that I remain unpersuaded that the claimants have satisfied the burden of proof of showing that there was any agreement that Mr Jemai's share of the proceeds was in excess of US$ 15m or indeed in excess of the sum of US$ 400,000 that I have concluded that he did, in effect, receive through Arcutes, Vantax and Fanteks. Compared to the amounts received by all the other fraudsters, this is perhaps a relatively small sum but I am sure that he regarded it as a handsome reward for the vital role that he played in the fraud as I have described above. For the avoidance of doubt, I should make plain that this conclusion as to the amount of his share of the proceeds does not, in my judgment, reduce or otherwise affect Mr Jemai's liability in relation to the main claims advanced against him in relation to the Second Trade.

519. Drawing all these threads together and for all these reasons stated above, it is my conclusion that Mr Jemai made the fraudulent misrepresentations numbered 1, 2 and 3 as summarised in paragraph 38 above; that such misrepresentations were relied upon by OSL in making the payment of US$ 213,468,750 to Adamant; that this resulted in the loss suffered by OSL in the sum of US$ 150,933,750 and that OSL is entitled to recover that sum from Mr Jemai as damages and/or equitable compensation on the basis of deceit and/or conspiracy and/or dishonest assistance. Insofar as may be

material, it is also my conclusion that such sum is recoverable by OML/OFC on the basis of breach of contract; and that Mr Jemai is also liable for an account. Further, it is my conclusion that he received the sum of US$ 400,000 (but no more) by way of his share of the proceeds of fraud and that such sum is recoverable by OSL/OML/OFC although such liability is, of course, concurrent and not additional to the sum of US$ 150,933,750.

The further claims against Mr Jemai, Jecot and Ms Jemai for dishonest assistance/knowing receipt

Jecot

520. It remains to consider the further claims against the Jemai defendants i.e. Mr Jemai, Jecot and Ms Jemai in relation to dishonest assistance/knowing receipt. I have already considered certain aspects of such claims in the course of considering the other claims against Mr Jemai. In essence, these further claims arise out of what the claimants say was the dishonest assistance provided by the Jemai defendants in laundering the monies received by Mr Kondratyuk/Firmly Oceans and, as appears from Figure 9, transferred to Jecot in various tranches between 8 April 2011 and 24 June 2011 totalling approximately US$ 35.4m alternatively knowing receipt of such monies. In considering these further claims, it is convenient to consider first of all the position of Jecot.

521. By way of overview and at the risk of repetition, Figure 9 shows that a total sum of approximately US$ 36.5 million was paid in three tranches by Arcutes to Firmly Oceans between 21 March 2011 and 31 March 2011. On Mr Kondratyuk's own evidence, this represented his (gross) share of the fraud proceeds. According to the evidence of Mr Kondratyuk, he then travelled with Mr Jemai from Moscow to Geneva on 1 April; on the plane, he and Mr Jemai discussed what Mr Jemai was going to do with his share of the money; and Mr Jemai told him that he intended to transfer his share of the money to his mother's company, that his mother was preparing a scheme according to which the money, based on bank transactions, would appear to be sent in exchange for the purchase of goods but that, in truth, the money would in effect be channelled through various banks (including Baltikums Bank where Mr Jemai had an old friend) and other offshore companies making it impossible to trace. In summary, Mr Kondratyuk's evidence was that he was very interested in this information; that he asked Mr Jemai whether he and his mother could do the same for him; that shortly after arrival in Geneva, Mr Jemai confirmed that he had spoken to his mother and arranged a meeting with her; that such a meeting did take place; that Mr Kondratyuk told Mrs Jemai that he wanted to hide his own share of the money obtained from the fraud; that detailed discussions then took place at that meeting between Mr Kondratyuk and Mrs Jemai with regard to a plan to hide the fraud proceeds including an appropriate fee for Mrs Jemai herself; that in order to avoid suspicion, Mrs Jemai told him that he would have to withdraw the money from Bordier Bank in multiple steps; that Mrs Jemai also said that, if asked, he should tell the bank that the money was going to be used to buy cotton and that they should enter into a fake profit sharing agreement to be signed by the directors of Firmly Oceans for presentation to M Giovanna at Bordier; and that Mr Kondratyuk agreed with this plan following which Mr Jemai sent him a fake profit sharing agreement which he signed and subsequently forwarded to Mr Giovanna. According to Mr Kondratyuk, Mrs Jemai told him that she had friends in Azerbaijan and suggested, in effect, other possible

frauds (similar to the fraud on Otkritie) that might be carried out in Azerbaijan; and that after discussing this with Mr Urumov, on 13 April he (Mr Kondratyuk) flew to Azerbaijan with Mr Urumov and Mr Jemai for meetings arranged by Mrs Jemai to discuss this further with certain individuals although none of the meetings actually resulted in any actual frauds.

522. This evidence is disputed by both Mr Jemai and Mrs Jemai. In particular, the evidence of Mrs Jemai is, in summary, that although she was introduced to Mr Kondratyuk by her son, Mr Jemai and did indeed meet him, the only discussions she had with Mr Kondratyuk concerned his expressed interest in investment of his own funds; and that the trip to Azerbaijan was intended and arranged to enable Mr Kondratyuk to see for himself possible investment projects in Azerbaijan.

523. In any event, there is no doubt that the bulk of the money received by Firmly Oceans from Arcutes was duly transferred to Jecot’s bank accounts at Credit Suisse (in 4 separate tranches between 8 April 2011 and 24 June 2011 totalling approximately US$ 29.1 million) and at BNP Paribas (by a single transfer of US$ 6.3m on 24 June 2011). Mr Kondratyuk’s evidence is that this was done in accordance with the plan agreed with Mrs Jemai; and that, pursuant to such plan, Mrs Jemai then opened accounts at BSI for Mr Kondratyuk's sister, Ms Demakova, and transferred his share of the fraud proceeds from the Jecot accounts to these accounts while retaining her fee. Mr Kondratyuk's evidence is that he used part of this money to buy a house in Spain and two expensive cars i.e. a Bentley and a Ferrari.

524. The claimants say that Mrs Jemai is the majority shareholder, sole director and controller of Jecot; and Mr Jemai himself is recorded as owning around 5% of the company. However, the Jemais have put forward various other (inconsistent) stories about the ownership and control of Jecot, including the suggestion (at least at one stage) that Mrs Jemai is only a minority shareholder and not the sole controller and that Mr Jemai has no shareholding at all. The claimants say that these are false attempts to distance the Jemais from Jecot’s obvious involvement in laundering the fraud proceeds. The evidence of Mrs Jemai is that at all material times she was unaware that such monies represented the proceeds of fraud and that, on the contrary, they were paid to and received by Jecot pursuant to various ‘profit sharing arrangements’ with or ‘investments’ by Mr Kondratyuk. In support of that assertion, there has been produced by Jecot/Mrs Jemai various documents which supposedly prove the existence of such genuine commercial arrangements. However, it is the claimants’ case that these documents are fakes or shams or both and that, in truth, these transfers were all part of a massive exercise to hide, launder and/or dissipate the fraud proceeds as Mr Jemai, Mrs Jemai and Ms Jemai well knew.

525. Of those monies transferred to Jecot, the largest proportion (approximately US$ 20.4m) was paid over in various tranches between about May and July 2011 to Vantax. As stated above, in the Swiss proceedings, Mrs Jemai denied that she or her family had any link to Vantax, except that it was a commercial partner of Jecot. Similarly, Mr Jemai also denied knowing anything about Vantax or that his sister, Ms Jemai, had any connection to Vantax. However, Ms Jemai now accepts that she signed documents relating to the incorporation of Vantax; and the corporate documents certainly record her as being the ultimate beneficial owner of Vantax as from January 2010 until at least November 2011 i.e. shortly after the fraud was discovered and having an unlimited power of attorney to act on its behalf throughout

that period. However, it is Ms Jemai's evidence that she merely helped to incorporate Vantax at the request of her mother (Mrs Jemai) whilst on a trip to Latvia to visit the dentist; and that this was to assist her mother's "*trading partners*", a Mr Rahimov and a Mr Mirzoaliev. She claims to have no knowledge of Vantax's bank (Baltikums Bank) or any dealings with it; nor any knowledge that the company she established and apparently owned and controlled subsequently received and paid out more than US$ 20 million of the fraud proceeds.

526. In essence, it is Jecot's case that Vantax is a genuine independent commercial entity run at arm's length by third parties; and that these transfers were, in effect, payments made in the ordinary course of business. This is disputed by the claimants. In particular, the claimants say that Vantax was, like Jecot, in effect beneficially owned and controlled by Mrs Jemai; that these transfers were not made for genuine business or investment purposes; and that, on the contrary, they were simply part of the exercise of money-laundering and dissipating the fraud proceeds. As already noted, default judgment in these proceedings was entered against Vantax on 9 November 2012. The claimants say that the Jemais' chosen defence required them to disavow their obvious interest in Vantax which has been left with a judgment in excess of US$ 21m; and that in itself this is inconsistent with the suggestion that Vantax is a genuine commercial entity run at arm's length from Jecot by third parties.

527. As appears from Figure 9, aside from the monies paid over by Jecot to Vantax, the remainder of the monies originally received by Jecot (i.e. approximately US$ 15m) was transferred in various amounts to various companies and individuals mainly in the course of 2011 although certain relatively small payments were made in early 2012. The claimants say that all of these transfers were part of the same massive money-laundering exercise and dissipation of fraud proceeds. In particular, the claimants draw specific attention to (i) two payments paid on 13 and 27 April 2011 totalling US$ 250,000 paid to an account at Interactive Brokers UK Ltd ("*Interactive Brokers*") in the name of Mr Jemai; (ii) various payments to Ms Jemai and her partner (Flavien Baré) totalling approximately US$ 400,000; (iii) various payments totalling approximately US$ 1.23m paid between about 6 October 2011 and 18 November 2011 to a company called Silver LLC (which Mrs Jemai has admitted is connected to her ex-husband and Mr Jemai's step-father, Wahid Jemai); and (iv) a single payment of US$ 380,000 made on 21 November 2011 into an account at the Bank of Azerbaijan in the name of Mr Kondratyuk. The claimants also say that it is noteworthy that further amounts were received via Vantax by Mr Jemai, his step-sister Nora, and Wahid Jemai.

528. In considering all this evidence, I bear well in mind the submissions advanced by the defendants with regard to the general credibility of Mr Kondratyuk and more specifically the submissions of Mr Smith concerning Mr Jemai and the Jemais generally. However, even putting all that evidence on one side, it is my conclusion that Jecot provided dishonest assistance in laundering the fraud proceeds received from Firmly Oceans (i.e. US$ 35.4m) and is liable on that basis and/or for procuring breach of contract and/or knowing receipt. I reach that conclusion for the following main reasons.

529. First, there is no doubt that Mrs Jemai's knowledge is, in effect, to be attributed to Jecot; and that she gave dishonest evidence in a number of important respects as already referred to above. In addition, it is, in my view, plain that Mrs Jemai

deliberately lied about the existence and timing of activity in relation to Jecot's account at Hinduja Bank. By way of background, Mrs Jemai gave evidence during the trial with regard to the use of this account. At a very late stage of the trial, the claimants obtained from the Swiss prosecutor certain documents relating to such account (the "Hinduja documents"). The claimants promptly gave disclosure of such documents as they were obliged to do in accordance with their continuing duty and made an application to adduce such documents in evidence which I granted. I also made provision for the service of any further evidence and submissions. In response, there was served the 6th witness statement of Mrs Jemai. At that stage of the trial, Jecot was no longer represented and such statement was in effect put in evidence by Mr Jemai. There then followed detailed written submissions on behalf of Mr Jemai and the claimants. I do not propose to deal with this material at length. For present purposes, it is sufficient to say that I accept the claimants' submission that this latest statement is not only implausible but substantially and dishonestly untrue; that, in particular and contrary to Mrs Jemai's evidence during the earlier part of the trial that the Hinduja account was not active in March 2012 and was closed very shortly after it was opened, that account was in truth used in March 2012 to receive millions of US$ deriving from the sale of pig iron that Jecot had purchased using the fraud proceeds; that most of the monies were then spirited off to Silver LLC, the Tajik company with a Kazakhstan bank account that is connected with Wahid Jemai and about which company Mrs Jemai's evidence was at the very least less than frank. From the material currently available, it also seems beyond doubt that Mrs Jemai deliberately breached this court's freezing orders and the Swiss authorities' sequestration of Jecot's bank accounts.

530. Second, I do not accept Mrs Jemai's evidence with regard to the supposed transactions that she says were entered into between Jecot and Mr Kondratyuk or his company Firmly Oceans. In particular, the suggestion that any "investor" would hand over many millions of dollars without some form of due diligence, proper paperwork and scrutiny (all of which is virtually non-existent here) is, in my judgment, not only inherently improbable but totally lacking in credibility; so too is the suggestion that any individual in the position of Mrs Jemai would or could honestly think that this might happen. I do not consider that such due diligence might be satisfied even by what Mrs Jemai says was the purpose of Mr Kondratyuk's trip to Azerbaijan (even if that were true which I do not accept); and it is, in any event, noteworthy that the first payment from Firmly Oceans to Jecot (more than US$ 5m) was made before that trip took place.

531. Further, it is, in my view, very significant that Mrs Jemai's evidence with regard to such supposed transactions has not been consistent. For example, Mrs Jemai first claimed that the monies were paid to Jecot pursuant to certain "*Profit Sharing Agreements*" between Jecot and Mr Kondratyuk in respect of cotton trading. Two such agreements were produced: the first supposedly with Mr Kondratyuk himself (*the "Jecot-Kondratyuk PSA*"); the second, between Jecot and Mr Kondratyuk's company, Firmly Oceans (*the "Jecot-Firmly Oceans PSA*"). Each was supposedly dated 7 April 2011 (the day before the first payment of more than US$ 5m) and provided for Mr Kondratyuk/Firmly Oceans to "*pre-finance*" Jecot's purchase of cotton from Turkmenistan, Tajikistan and Azerbaijan, in return for a 50% share of any profits. It suffices to say that even Bordier found these agreements suspicious, calling one a "*synonym for corruption*" as they patently were and as Mr Kondratyuk himself

admits. Mrs Jemai next claimed that she had then suggested, and Mr Kondratyuk had agreed, that he would invest US$ 5.1m in the purchase of pig-iron from Ukraine; and that Mr Kondratyuk subsequently also agreed to purchase Jecot's interest in certain cotton factories or mills in Azerbaijan for around US$ 18m, which was effected through a two-page "Sale-Purchase Agreement" dated 5 September 2011 between Jecot and a vehicle called Nadare LLP (*the "Nadare SPA*"). Mrs Jemai also produced to the Swiss prosecutor a purported "*Annex*" to the Jecot-Kondratyuk PSA (but not the Jecot-Firmly Oceans PSA) dated 27 September 2011.

532. The claimants say that both these documents are forgeries created by Mrs Jemai (with the knowledge of both Mr Jemai and Ms Jemai as well as Ms Jemai's assistance with the drafting) at a later date and back-dated in order to give credence to Jecot's case that the monies transferred by Firmly Oceans to Jecot were genuine investments. In support of that submission, the claimants rely upon Mr Kondratyuk's evidence that he never signed these documents – although he does accept that what seems to be his signature appears on them. His explanation for the latter is that in November 2011, shortly before Mr Kondratyuk was arrested by the Swiss authorities, he and the Jemais met at Mrs Jemai's/Mr Jemai's apartment in Geneva and, at Mrs Jemai's suggestion and under her instruction, he signed or initialled many blank sheets of paper, so that Mrs Jemai (with Mr Jemai's and Ms Jemai's knowledge, and Ms Jemai's assistance with the drafting) could use them to fabricate further purported contracts or other documents to assist with the laundering of the fraud proceeds. The Jemais all say that this is a lie. This dispute – in particular the date(s) when the document was created – might have been resolved if an electronic version (including relevant metadata) had been produced as it should have been. As to this, it was originally suggested on behalf of Jecot that an electronic version could not be produced because the relevant computer was being held by the Swiss prosecutor and was not accessible. In an attempt to overcome this difficulty, I made a specific order in the course of the trial for disclosure of the electronic version (including relevant metadata). For reasons which remain obscure and after Jecot's solicitors had ceased to act, there was a very considerable delay (some two months) before a USB stick was eventually produced supposedly with an electronic version of the document. However, the conclusion reached by the claimants' experts, Kroll, is that two files were wiped irretrievably and that the metadata does not relate to this document or has possibly been faked. In my judgment, the overwhelming inference is that this information has been deliberately suppressed by Mrs Jemai and possibly others in order to prevent the truth coming out – in the same way that Mrs Jemai destroyed the computer server with a hammer.

533. Be this as it may, I am satisfied that both these documents are indeed forgeries for the following specific reasons. First, there is other evidence that Mrs Jemai has used pre-signed blank documents to create fake documents; and also used a similar sham "*Profit Sharing Agreement*" as documentary cover for money laundering transactions, such as that with Desert Lake Finance Inc (a Belize company that funded Vantax's payment of Ms Jemai's "*travel expenses*"). Second, I am not persuaded that any of the monies transferred by Mr Kondratyuk/Firmly Oceans to Jecot were in fact used to fund genuine cotton deals.

534. Third, so far as the purported Annex is concerned: (i) it is, to say the least, odd that this was not produced originally as part of the dossier given by Jecot to the Swiss

police in November 2011 – this lends credence to the theory that it was created at a later date; (ii) although it purports to acknowledge payment for all US$ 35.4m of the proceeds Jecot received, this is demonstrably false since, as already noted, the documents plainly show that some US$ 20m of the monies were paid through to Ms Demakova (i.e. Mr Kondratyuk's sister) and her company (Qast), and were spent *inter alia* on a Bentley, a Ferrari and a luxury Spanish villa; (iii) Mrs Jemai's explanation for why it refers to just 3,372 tonnes of cotton having been bought (c.f. the Firmly Oceans-Jecot PSA (7,800mt) and the Jecot-Vantax contract (5,000mt)) was that an English company, Jecot Ltd, was involved but Jecot Ltd had been dissolved more than 2 years earlier.

535. Fourth, so far as the Nadare SPA is concerned, reference to such purported agreement only emerged at a relatively late stage. Its features are, to say the least, very odd and not easy – indeed impossible – to fit in with the rest of the evidence. On its face, it purports to consist of an agreement to sell Jecot's purported interest in three mills to Nadare (supposedly a company owned by Mr Kondratyuk) apparently for US$ 17.8m which sum was supposedly to be deducted from the monies received from Firmly Oceans. However, by the supposed date of the agreement, there was not enough left for such deduction. Further, although Jecot produced certain minutes of what purported to be a Jecot shareholders' meeting on 5 September 2011 supposedly approving the purported "sale" of the mills to Mr Kondratyuk's company, the overwhelming likelihood is, in my judgment, that there never was any such meeting, that these so-called minutes are not genuine and that the evidence of both Mrs Jemai and Mr Kamotesov to the contrary is dishonestly false. In particular:

i) The minutes are in English and there was no "*feuille de présences*", unlike other minutes in the bundles.

ii) No electronic version (or email communication) of this document has been disclosed, which might cast light on true date of creation;

iii) Jecot did not even own one of the mills (the Agdash mill) at the time; and the oral evidence of Mrs Jemai and Mr Kamotesov (not mentioned in their written statements) of an undocumented and entirely oral sale from Mr Kamotesov to Jecot at around the same time (at a price Mrs Jemai did not know, is as yet unpaid and is not evidenced by any valuation or other financial documentation) was, in my judgment, not credible. Inexplicably (for Jecot's case), the supposed minutes do not record any resolution for Jecot's *purchase* of Agdash from Mr Kamotesov, prior to its supposed sale of the same to Mr Kondratyuk.

iv) The documents relating to Nadare present a confused – and confusing – picture which would seem to undermine this part of the story advanced by Jecot. Thus, the documents show that Nadare was incorporated on 5 September 2011 – the date of the Nadare SPA and the purported Jecot EGM – by two Belize members (Belize also being the place of incorporation of Vantax); and was acquired by Mrs Jemai at the latest by October 2011, again through a contact at Baltikums (Mr Grigoriev(s)), where a bank account in Nadare's name was established. Initially, Mrs Jemai proposed that Mr Kondratyuk transfer some US$ 384,000 to Nadare's Baltikum's account under a fake invoice for bags that she had created or procured and for which she also obtained a sealed

version. This sum was the very amount left in Firmly Oceans' account at that time, corroborating Mr Kondratyuk's account in his first witness statement. All of this is consistent with Nadare being a company owned or at least controlled by Mrs Jemai not Mr Kondratyuk. The claimants say that when it was clear that the net was closing in on the fraudsters (and Mr Kondratyuk was arrested), the Jemais decided to pretend that Nadare was *Mr Kondratyuk's* company, and that he had spent US$ 17.8m of the fraud proceeds on Nadare's purchase of the mills (for which purpose, after Mr Kondratyuk's arrest, Mrs Jemai procured a power of attorney to be granted to his brother, Mr Oleg Kondratyuk so that he could effect the sham transfers of shares in two of the Mills into Nadare's name. However, there was never any such agreement, and Mr Kondratyuk knew nothing of it. Thus, the claimants say that it was the means by which the Jemais now seek to 'account' for the balance of Mr Jemai's share of the fraud proceeds. I readily accept that this explanation of events is somewhat speculative but it seems to me entirely plausible.

v) Nadare was dissolved in May 2013 despite purportedly (still) being the majority shareholder in the three Mills.

536. Fifth, I do not accept that Vantax was or is an independent genuine commercial entity run at arm's length by third parties; or that the transfers from Jecot to Vantax were, in effect, payments made in the ordinary course of business. As to the status of Vantax, I have already referred to the fact that contrary to the original assertions by Mrs Jemai and Mr Jemai, the company was originally incorporated by Ms Jemai (on her own evidence at the request of Mrs Jemai). I have also referred to the 'digipass' which was in effect the digital key to the operation of Vantax's Baltikums Bank account. There is no doubt that this had the same reference number and was therefore the very same digipass which the bank documents show was at least apparently provided on opening to Ms Jemai to operate the account and which was subsequently found by the Swiss authorities in the carton bag in the basement of her apartment in Geneva as already referred to earlier in this Judgment However, Ms Jemai's evidence was that her signature on these bank documents was forged; that she was never in Latvia at the time when she supposedly opened this bank account; that she had never been provided with the digipass and indeed had never seen or used this digipass before; that it must have been left behind by mistake by someone who had stayed in the spare room in Mrs Jemai's apartment (probably or at least perhaps Mr Rahimov); and that it was somehow transferred to a bag of other items (including the key to Mr Kondratyuk's Bentley) which Ms Jemai mistakenly took almost a year earlier to her apartment because she thought it contained only her own study materials. I deal below with the circumstances relating to the opening of the bank account but, in any event, I do not accept Ms Jemai's evidence that she had never seen or used the digipass. Despite Ms Jemai's protestations to the contrary, the overwhelming likelihood is, in my judgment, that Vantax was, in effect, beneficially owned by Mrs Jemai or, if Mrs Jemai was not the beneficial owner, at the very least, controlled or used by her with the knowledge and consent of Ms Jemai having regard, in particular, to the nature of the payments into and out of the Vantax account and the manner in which the account appears to have been operated which bear all the hallmarks of that account being used as a conduit for money-laundering purposes. Further, documents obtained by *Norwich Pharmacal* order against Vantax's registered agent in Belize include a letter from Ms Jemai to Vantax purportedly dated 21 November 2011 (the day before Mr

Kondratyuk's arrest in Switzerland), tendering her 'resignation' as its beneficial owner and asserting that she had gratuitously transferred it to Mr Mirzoaliev. The claimants say that this was clearly an attempt to distance the Jemais from a company that was instrumental in laundering the fraud proceeds and that these documents can only have been prepared by or at the behest of one or more of the Jemais. Ms Jemai says that what appears to be her signature on this 'resignation' document was forged. Expert evidence on this issue (from Robert Radley and Dr Giles) supports the fact that her signature was forged or at least was not her "usual" signature. However, it is the claimants' case that it can safely be inferred that if it is not Ms Jemai's own (unusual) signature, it must be that of Mrs Jemai or Mr Jemai who had both motive and opportunity - or procured by one or more of them. On its own, I accept that that is again somewhat speculative but taken together with all the other evidence, it seems to me that that is what probably happened.

537. As to the suggestion that the transfers from Jecot to Vantax were in the ordinary course of business, it seems to me that this is demonstrably false. Even a cursory review of the bank statements reveals a pattern of circular transactions on the Vantax account indicating that it was being used by Jecot primarily as a 'transit account' between its own bank accounts at Crédit Suisse and BNP Paribas, to give its Swiss banks the false impression of trading activity where there was none. Some of the transfers obviously bear false payment references (e.g. to non-existent cotton contracts). In evidence, Mrs Jemai sought to explain at least some of these payments; although I confess that I found her explanation difficult to understand. Insofar as it can be understood at all, it would seem that the avowed purpose of at least some of the circular payments was to deceive Jecot's banks and/or its credit insurers into believing that the customer had paid for cotton, when in fact Jecot itself was supposedly financing its *own* sales; and the Vantax bank account was made available to the Jemais to use for their own personal purposes. A good illustration of the latter is a payment routed through Vantax for the benefit of Nora/Wahid Jemai, clearly funded by an incoming payment from Jecot and falsely referenced as a "*payment for cotton*".

538. More specifically, if it were true that the Vantax account was being used in the ordinary course of business, it is inexplicable that of the sums transferred by Jecot to Vantax, approximately US$ 20m was transferred out by Vantax to accounts at BSI in Geneva held by Mr Kondratyuk's sister, Ms Demakova, and her company, Qast, which monies were then used *inter alia* for the purchase of expensive cars (a US$ 255,000 Bentley Continental and a US$ 211,000 Ferrari, each of which was registered to Jecot) and a US$ 6m luxury villa in Spain.

539. Other payments out by Vantax are equally inexplicable on that basis e.g. the sum of almost US$ 500,000 paid in two tranches to the account (also at Baltikums Bank) of Fanteks consisting of (i) US$ 399,950 on 31 March 2011 (i.e. even before the supposed Jecot-Firmly Oceans PSA and the Jecot-Vantax Purchase Contract) which was, as I consider, evidently the on-payment of the US$ 400,000 transferred directly by Arcutes to Vantax on 21 March 2011 despite Mrs Jemai's evidence to the contrary; and (ii) a further US$100,000 on 17 May 2011. I have already referred to these monies above and to the fact that they were used in part by Mr Jemai to purchase the Ferrari 458 in Monaco for €190,000 on 3 August 2011. Mr Jemai initially claimed to the Swiss prosecutor that these payments from Vantax to Fanteks were legitimate commissions on certain buy/sell transactions. However, he has since changed his

story, and, as already noted, now claims that the US$ 400,000 was actually money his parents had saved on his behalf when he was a child, which he had lent to Jecot in 2008 and which Jecot had coincidentally agreed to repay through a cotton deal with Vantax; and the purchase of the Ferrari was a "*buy/sell deal*" in which "*the sell side of the operation did not happen as planned*". As to the supposed repayment of the loan to Jecot, I have already dealt with this earlier in this Judgment. As to the supposed "buy/sell" deal of the Ferrari, this was not supported by any independent credible evidence and, in my judgment, is dishonestly false. The suggestion that the payments from Jecot were made in the ordinary course of business can also be seen to be demonstrably false by the fact that much of the balance of the monies paid by Vantax to Fanteks (some US$ 124,700, which Mr Jemai transferred to another account at Baltikums Bank) was used by Mr Jemai to fund a lavish lifestyle, making hundreds of payments for shopping in luxury boutiques, international travel, expensive restaurants, in London, Moscow, Geneva, Barcelona, Monaco, Ibiza and elsewhere. Mr Jemai was clearly living the high-life using the proceeds of fraud.

540. There are also much smaller payments which are also inexplicable on the Jemais' case. Thus Vantax's statements show that Ms Jemai received US$ 3,300 and €2,050 from Vantax on 27 September 2011 (referenced as "*travel expenses*"). Her evidence was that the first of these payments represented reimbursement of travel expenses from Mr Rahimov in connection with her establishment of Vantax more than one year earlier (because she needed to stay longer in Latvia and had to buy new plane tickets) was lacking in credibility – as, in my view, was her explanation about taking US$ 10,000 in cash to Latvia to pay her dentist. As submitted by Mr Berry, it seems to me that the more likely explanation is that this cash was needed at least in part to help acquire Vantax. The US$ payment on 27 September 2011 happened to empty that Vantax account; and the € payment happened to be exactly the amount (when combined with other "*travel expenses*" paid to a Mr Lawson) paid into the Vantax Account by Desert Lake Finance on 22 June 2011. On any analysis, the € payment bears a knowingly false payment reference.

541. When it was realised that the fraud had been discovered, it appears that steps were taken to transfer the stated beneficial ownership of Vantax into the name of another friend in Azerbaijan (Mr Mirzoaliev). As submitted by Mr Berry, it seems to me that the Jemais have in effect been forced to disown Vantax, and to allow judgment in default to be entered against it, to try to distance themselves from the obvious money laundering.

542. In summary and for all these reasons, it is my conclusion that on the introduction of Mr Jemai, Mr Kondratyuk and Mrs Jemai/Jecot agreed on a plan to launder Mr Kondratyuk's share of the proceeds i.e. US$ 35.4m; and that when Jecot received these monies from Mr Kondratyuk via Firmly Oceans (and at all material times thereafter), Mrs Jemai and therefore Jecot knew that such monies were the proceeds of fraud or, at the very least, suspected that that was the case and deliberately refused to ask obvious questions lest she/Jecot discovered the truth; and that Mrs Jemai/Jecot then dishonestly provided Mr Kondratyuk with dishonest assistance in laundering that money so as to hide it and to put it out of reach of the claimants. On this basis, Jecot is liable to OSL/OFC/OML for damages and/or equitable compensation in the sum of US$ 35.4m and/or an account on the basis of dishonest assistance, procuring breach of contract alternatively knowing receipt.

543. By way of footnote, I should add that in September and October 2011, Fanteks received another US$ 1.475m, this time from an account at ABLV Bank in Latvia held by a BVI company called Tess Group SA ("Tess"). Mr Jemai has alleged in the Swiss proceedings that Tess was an investment company and that this sum was an "*intermediary commission*" on an iron ore transaction. However, my tentative conclusion is that these monies in fact represented part of the fraud proceeds which Mr Kondratyuk arranged to be laundered through Tess, a company which belongs to Alexander Suchkov of Quickline; that what appears to have happened is that Mr Jemai arranged for these monies to be paid away as follows viz (i) in November 2011, almost US$ 1m was transferred to Trian Inter Trading ("Trian"), another New Zealand company, ostensibly for the payment of freight on a shipment of some sort but in reality as a cash depositary for Mr Jemai; (ii) in December 2011, US$ 549,400 was transferred to another account at Baltikums Bank in the name of Lormos Global SA ("Lormos"), a BVI company owned by Mr Jemai also under his Latvian name, Jevgenijs Parsins which opened the account at Baltikums Bank just a week after Mr Kondratyuk's arrest in Switzerland in an obvious attempt hide the money further; (iii) In January 2012, Mr Jemai caused Lormos to pay US$ 489,100 to an account at Agroinvestbank in Tajikistan in the name of an entity called Vellington Textile which he now claims was used to make a 2-year investment in "*machinery*". There is no documentary and no independent evidence to suggest that any of these transfers were genuine commercial payments. If they were, proper documents would exist and would have been produced. Thus, my tentative conclusion is that the overwhelming likelihood is that they were not genuine commercial payments; that this supports my earlier conclusion in the previous paragraph; and that, as submitted by Mr Berry, they were merely further attempts to launder the fraud proceeds and to put them where they could be held by or for Mr Jemai but beyond the reach of the claimants. After circulating a draft of this Judgment, Mr Smith submitted that in fact it was never the claimants' case that the monies which came from Tess represented the proceeds of fraud. It is, I think, right to say that the claimants did not assert a separate claim against Mr Jemai for dishonest assistance/knowing receipt in respect of these monies although they did (as I understood) rely upon these matters to support their other claims against both Jecot and Mr Jemai personally. It is most regrettable that this confusion has arisen; and unfortunately, it was impracticable to invite further submissions from the claimants on this point prior to the handing down of this Judgment. For this reason alone, I have decided to refrain from making any final determination at this stage with regard to the monies received by Fanteks from Tess. However, if necessary, I will hear further submissions on this point. For the avoidance of doubt, I should make plain that these matters do not alter or otherwise affect the rest of this Judgment.

Mr Jemai

544. I turn to deal briefly with the alternative claim for dishonest assistance against Mr Jemai. In summary, Mr Jemai accepts that Mr Kondratyuk met and had discussions with his mother from March/April 2011 onwards but he says is, in effect, that the arrangements made between them had nothing to do with him. In particular, it is his evidence that they had meetings without him; that other than hearing a few comments here and there when he was present at the same time as the pair of them, he knew little of what they were doing; that from what they both told him, they had decided to do a joint venture with commodities. Once again, this evidence clashes with that of

Mr Kondratyuk. I am ready to accept that Mr Jemai may not have been involved in all the detailed arrangements which, as I have found, Mr Kondratyuk ultimately made with Mrs Jemai to launder his share of the proceeds through Jecot and Vantax. However, bearing in mind the close friendship Mr Jemai obviously had with Mr Kondratyuk and in the light of my earlier findings, in particular that together with the other fraudsters including Mr Kondratyuk, Mr Jemai was an active participant in the Argentinean Warrants Fraud for which he received US$ 400,000 as his share of the proceeds on 21 March 2011, it is, in my judgment, not credible that there were no discussions between Mr Jemai and Mr Kondratyuk as to what they would do with all this money. On the contrary, it seems to me that the overwhelming probability is that such discussions did indeed take place and that Mr Jemai introduced Mr Kondratyuk to his mother in order dishonestly to assist Mr Kondratyuk to launder what he knew was his (Mr Kondratyuk's) share of the fraud proceeds and for that specific purpose – as indeed happened. That conclusion is further reinforced by the fact that in April 2011, Mr Jemai went with Ms Demakova to BSI Bank in Moscow to open various banks accounts including those through which certain of the fraud proceeds were subsequently routed as appears from Figure 9. On this basis, it is my conclusion that Mr Jemai is liable to OSL/OFL for damages and or equitable compensation in the sum of US$ 35.4m and/or an account.

Ms Jemai

545. Finally, I turn to consider the discrete claims against Ms Jemai for dishonest assistance and/or knowing receipt in the sums set out above viz US$ 20,740,000 and CHF 32,205. These figures require some explanation. The first is a global figure consisting of a number of separate payments viz (i) the sum of US$ 400,000 paid by Arcutes to Vantax on 21 March 2011 which, as I have already found, represented Mr Jemai's share of the fraud proceeds and (again as I have found) was subsequently transferred to Fanteks for the benefit of Mr Jemai on 31 March 2011; and (ii) (as appears from Figure 9) the sum of US$ 20.34m originally received by Jecot from Mr Kondratyuk/Firmly Oceans and subsequently paid to Vantax's account in Latvia at Baltikums Bank in seven tranches between 11 May 2011 and 11 July 2011, most of which was then further distributed to Qast and Ms Demakova. The second figure (i.e. CHF 32,205) relates to a single payment made by Firmly Oceans to Ms Jemai's personal account on 6 May 2011.

546. As to the claim for US$ 20,740,000, as appears from Figure 9, it is common ground that the various payments making up this total figure were made as stated above by Arcutes to Vantax and then paid out in part to Fanteks and in part to Qast/Ms Demakova; and, as I have found, there is no doubt that these monies were the proceeds of fraud. However, it is Ms Jemai's evidence that she had nothing to do with these payments and certainly did not know that such monies were fraud proceeds. It is true that there is no direct evidence that she was herself involved in these payments. However, it is my conclusion that the claims advanced by the claimants succeed on the basis of dishonest assistance alternatively, at the very least, on the basis of knowing receipt for the following reasons.

547. First, there is no doubt that Ms Jemai has, or at least had, a very close relationship with her mother and also her brother – although with regard to the latter, my impression is that she was very critical of him particularly with regard to his lifestyle and spendthrift nature. That was transparently obvious when they gave evidence. I

fully recognise that there is no basis for assuming or inferring "guilt by association" but, in my view, the existence of such close relationship is at least of some relevance in considering the inherent probabilities.

548. Second, as I have already stated and as Ms Jemai accepts, she was the individual who signed documents relating to the incorporation of Vantax; and the corporate documents certainly record her as being the ultimate beneficial owner of Vantax as from January 2010 until at least November 2011 i.e. shortly after the fraud was discovered and having an unlimited power of attorney to act on its behalf throughout that period. With regard to the circumstances concerning Ms Jemai's involvement in the incorporation of Vantax, it is perhaps helpful to quote Ms Jemai's evidence on this topic as it appears in paragraphs 2-6 of her (first) witness statement:

> "*2. My only involvement with Vantax is limited to 1 day, in spring 2010, I believe it was in May 2010, when I helped to incorporate the company. I was in Latvia at the time, visiting my father and a dentist. I received a phone call from my mother, Olessia Jemai, who told me that her long time trading partners, Mr. Rakhimov and Mr. Mirzoaliev require assistance to incorporate their company. She received this request from Mr. Rakhimov and, given my location at the time, asked me whether she could transmit my phone number to Mr. Rakhimov who would contact me directly and whether I could assist him.*
>
> *3. Mr. Rakhimov then contacted me directly and asked me if I could help him with the incorporation of the company. I was told that this was very temporary in nature and that an agent would get in touch with me to organise everything.*
>
> *4. Given that my role would be only very temporary, I agreed to assist as I previously met Mr. Rakhimov in Geneva and I knew that himself and Mr. Mirzoaliev were active in cotton business and did business together with Jecot since 1990s.*
>
> *5. I met an agent in Latvia, who presented me with some documents that I had to sign. I do not remember exactly which documents I have signed and I do not remember which role I had in the company, but I remember that one of the documents I have signed was an undated resignation form. I remember this, because the agent told me that this would be used to remove me from the company. I also had to give a copy of my passport.*
>
> *6. I have NEVER signed any of the documents for or on behalf of Vantax following that 1 day in spring 2010, when I helped to incorporate the company.*"

549. The impression given by Ms Jemai in this part of her statement – and also in her oral evidence on this topic - is one of helpful innocence. In my judgment, it is totally lacking in credibility. In evaluating this evidence, it seems to me relevant and important to bear in mind that Ms Jemai is a highly intelligent individual. By the date when she assisted in the incorporation of Vantax i.e. 2010, she was an experienced

banker who had worked with HSBC since 2004. In evidence, she accepted that she had received AML (i.e. anti-money laundering) training although she subsequently informed the court that she had only received such training in the second half of 2011. In my judgment, even on Mrs Jemai's own evidence and on the assumption that she only received AML training after the relevant events, what she was being asked to do would have sent loud alarm bells ringing in the mind of any honest individual (particularly a skilled banker like Ms Jemai) so as to prompt such individual to ask at least some basic questions which Ms Jemai failed to do let alone carry out proper due diligence. Even if she had, I doubt that any answers she might have been given would have been sufficient to assuage the suspicions of an honest individual with regard to the extraordinary exercise she was being asked to carry out. In my judgment, the overwhelming inference to be drawn from her agreement to help set up Vantax in these circumstances is that she knew that Vantax was a company which would be used for money-laundering purposes or at the very least she decided deliberately not to ask obvious question lest she discover the truth. On this basis alone, it seems to me that Ms Jemai is liable for dishonest assistance and/or knowing receipt in relation to any fraud proceeds which subsequently went through Vantax's bank accounts (including the sums claimed) even if her evidence that her involvement in Vantax was limited to that single day in 2010. However, in my judgment, Ms Jemai's disavowal of any further involvement in Vantax is a deliberate lie for the reasons set out below.

550. Third, in terms of general credibility, it is my conclusion that Ms Jemai gave dishonest evidence with regard to the supposed loan to Jecot in 2008 and its repayment to explain the payment of US$ 400,000 by Vantax to Fanteks/Mr Jemai. I have rejected that story; and it follows, in my judgment, that Ms Jemai's evidence on this topic was deliberately false. I have also already commented on other parts of her evidence which I do not propose to repeat.

551. Fourth, there is no doubt that a bank account for Vantax was opened at Baltikums Bank in October 2010 (through a family friend, Mr Grigoriev) and that in January 2011 internet banking facilities were arranged for the account – although the circumstances in which these arrangements were made were hotly disputed. In particular, there was much dispute concerning the circumstances in which the bank appears to have been provided with Ms Jemai's passport details (as certainly appeared from the bank's own documents) if, as she said, she had no involvement in these arrangements: Ms Jemai's evidence was that such details must have been obtained from a photocopy of her passport. In any event, it is plain that in each case, Ms Jemai's identity (including her passport details) was used to make these arrangements. It is common ground that the signature used was forged or at least not Ms Jemai's "usual" signature; and, for present purposes, I am prepared to assume that such "forgery" was done by someone other than Ms Jemai although I do not accept that that is necessarily so. However, as I have already stated, I reject Ms Jemai's evidence concerning the digipass and the operation of Vantax's bank account. Her evidence to the contrary was, in my judgment, deliberately false.

552. Fifth, I have already referred to the various documents concerning Vantax and others which Mrs Jemai says were signed by Mr Kondratyuk and which are, in my view, fakes or shams or both. Despite Ms Jemai's protestations to the contrary, it is my conclusion that she was probably involved in the preparation of at least some of these documents. I recognise that this point on its own is somewhat speculative but there is

no doubt that unlike her mother or brother, it was she i.e. Ms Jemai who had the language and technical skills to do this; and that this conclusion is justified having regard to the entirety of the evidence.

553. Sixth, there is no doubt that she personally received money from the Vantax account including the small payment which was the closing balance on the account. Ms Jemai's explanations as to how this came about were difficult, if not impossible, to accept.

554. In my judgment, these points – both individually and collectively – persuade me that Ms Jemai's evidence that she was not aware of and not involved in the arrangements with Mr Kondratyuk to assist him in laundering the fraud proceeds is deliberately false; that on the contrary she was well aware of Vantax being used as a money-laundering machine and dishonestly assisted in that operation as I have described above. At the very least, it seems to me that Ms Jemai is liable for knowing receipt (including for the small sum of CHF 32,205 which she received directly from Mr Kondratyuk).

Conclusion

555. For all these reasons, it is my conclusion that each of the following defendants is in principle liable in damages and/or to pay equitable compensation as follows:

In respect of the Sign-On Fraud:

i) Mr Urumov US$ 23,000,000

ii) Mr Pinaev US$ 12,044,111

iii) Denning: US$ 6,552,889

556. In respect of the Argentinean Warrants Fraud:

i) Mr Urumov: US$ 150,933,750

ii) Denning: a sum yet to be determined

iii) Ms Balk: US$ 36,978,000;

iv) Mr Pinaev: US$ 150,933,750

v) Pleator: US$ 36,998,000;

vi) Rossmore: US$ 6,131,000;

vii) Ms Kovarska: CHF 14,720,000, €1,450,000 and US$ 528,861

viii) Mr Gersamia: US$ 150,933,750

ix) Templewood: US$ 6,900,000

x) Mr Gersamia Sr: US$ 2,750,000

xi) Mr Jemai: US$ 150,933,750

xii) Jecot: US$ 35,400,000

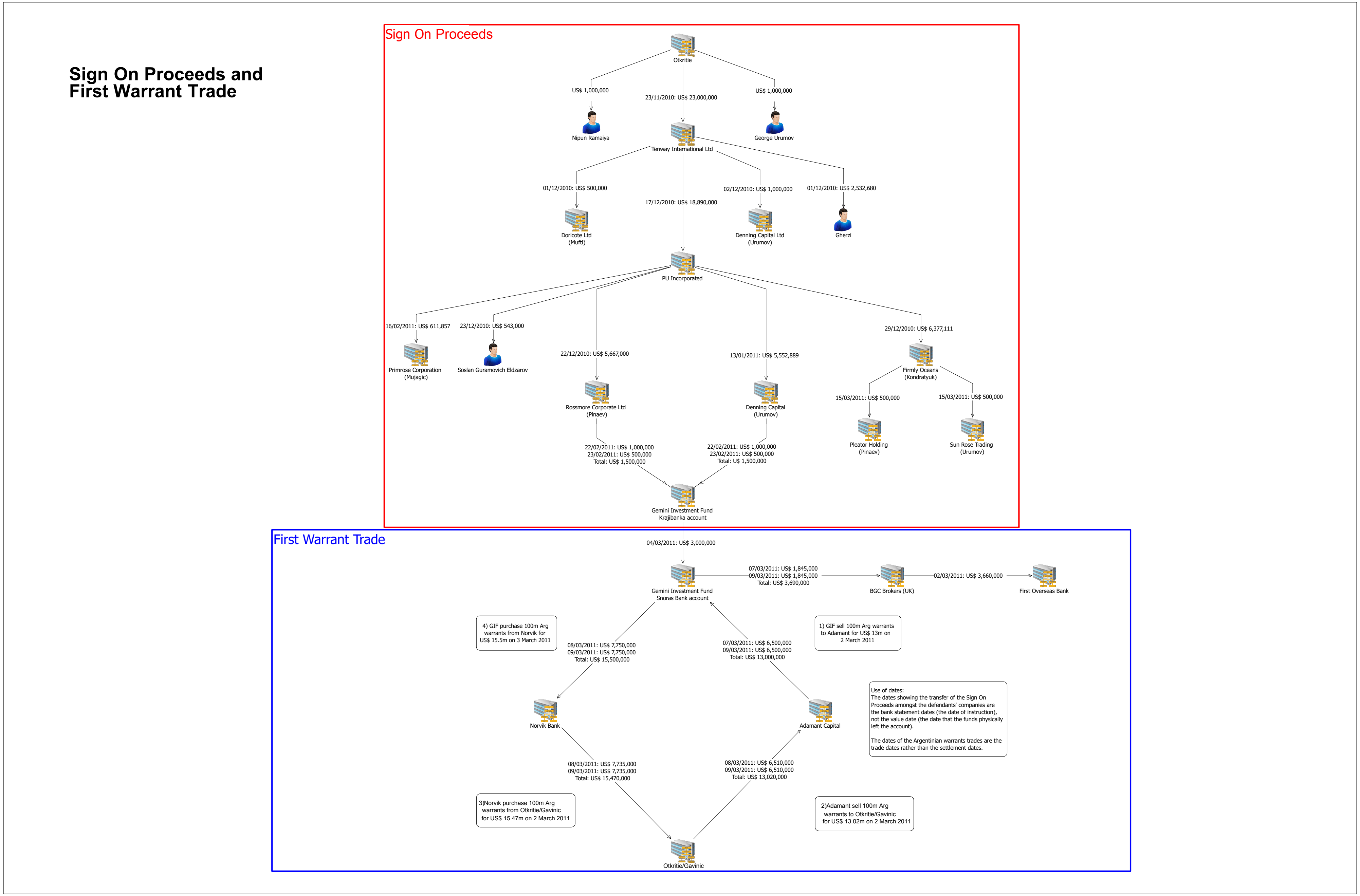
xiii) Ms Jemai: US$ 20,740,000 and CHF 32,205

557. I should make plain that these are headline figures only. They are subject to the point referred to earlier in this Judgment as to what if any deduction should be made to take account of recoveries already received by the claimants as to which I will hear further argument if the point cannot be agreed. In addition, subject to further argument, it seems to me that the claimants are entitled to interest and costs which I hope can be agreed. Further, it is my general conclusion that the claimants are in principle entitled to an account, declaratory relief and proprietary remedies in the light of my conclusions as set out in this Judgment – although, as agreed at the hearing, the precise nature and formulation of such relief and remedies will have to be the subject of further argument unless otherwise agreed. I should make plain that in the alternative, I have also upheld other smaller claims against certain of the defendants which I have referred to earlier in this Judgment. To avoid repetition, they are not identified in the above summary but will, of course, have to be identified properly in my order.

558. I would very much hope that all outstanding matters can be agreed and a draft agreed order be prepared for my approval but failing agreement I will, of course, deal with any arguments concerning the form of order and any other outstanding issues.

559. Finally, I would like to express my thanks to all concerned in what has been a very lengthy trial.

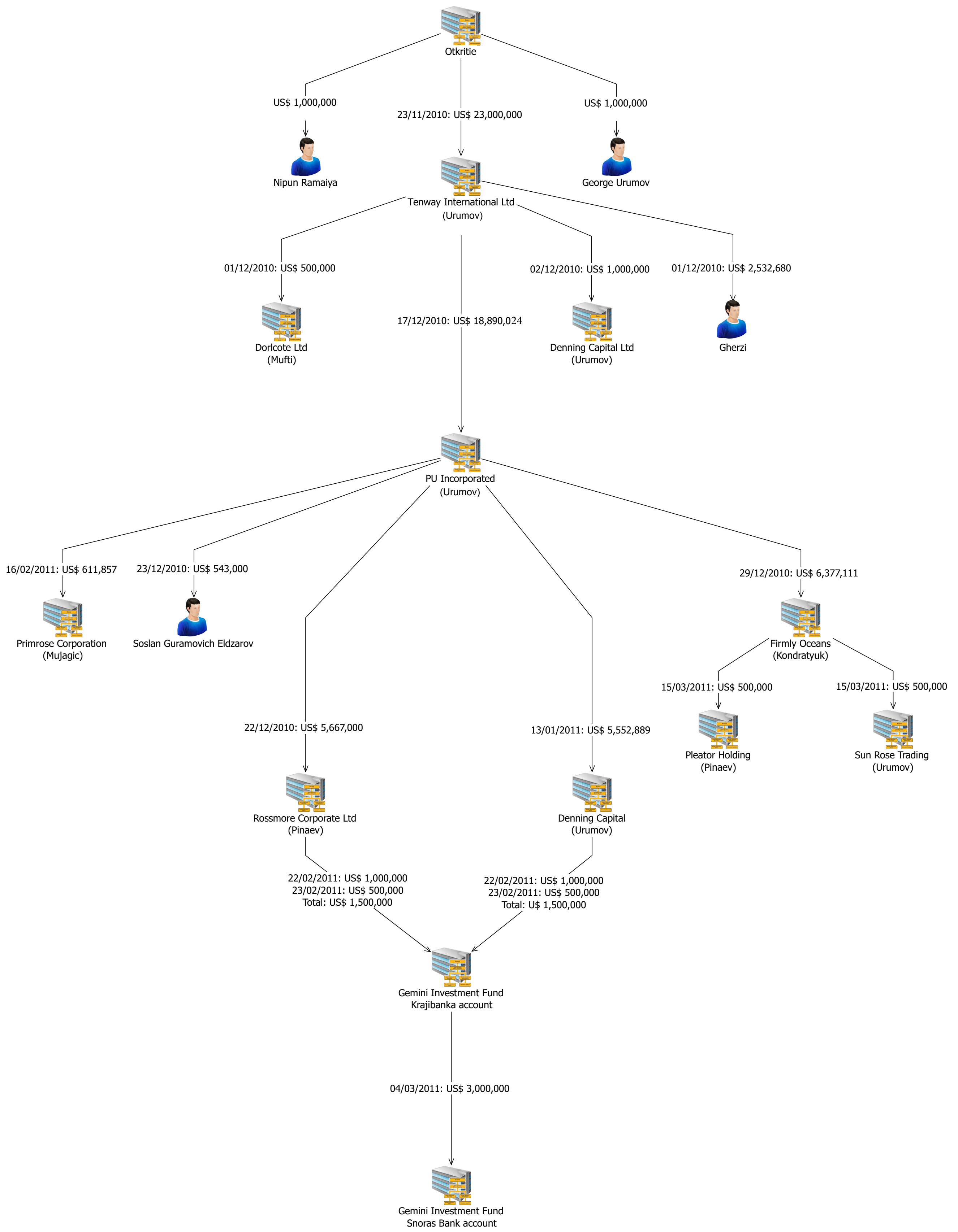
Figure 1



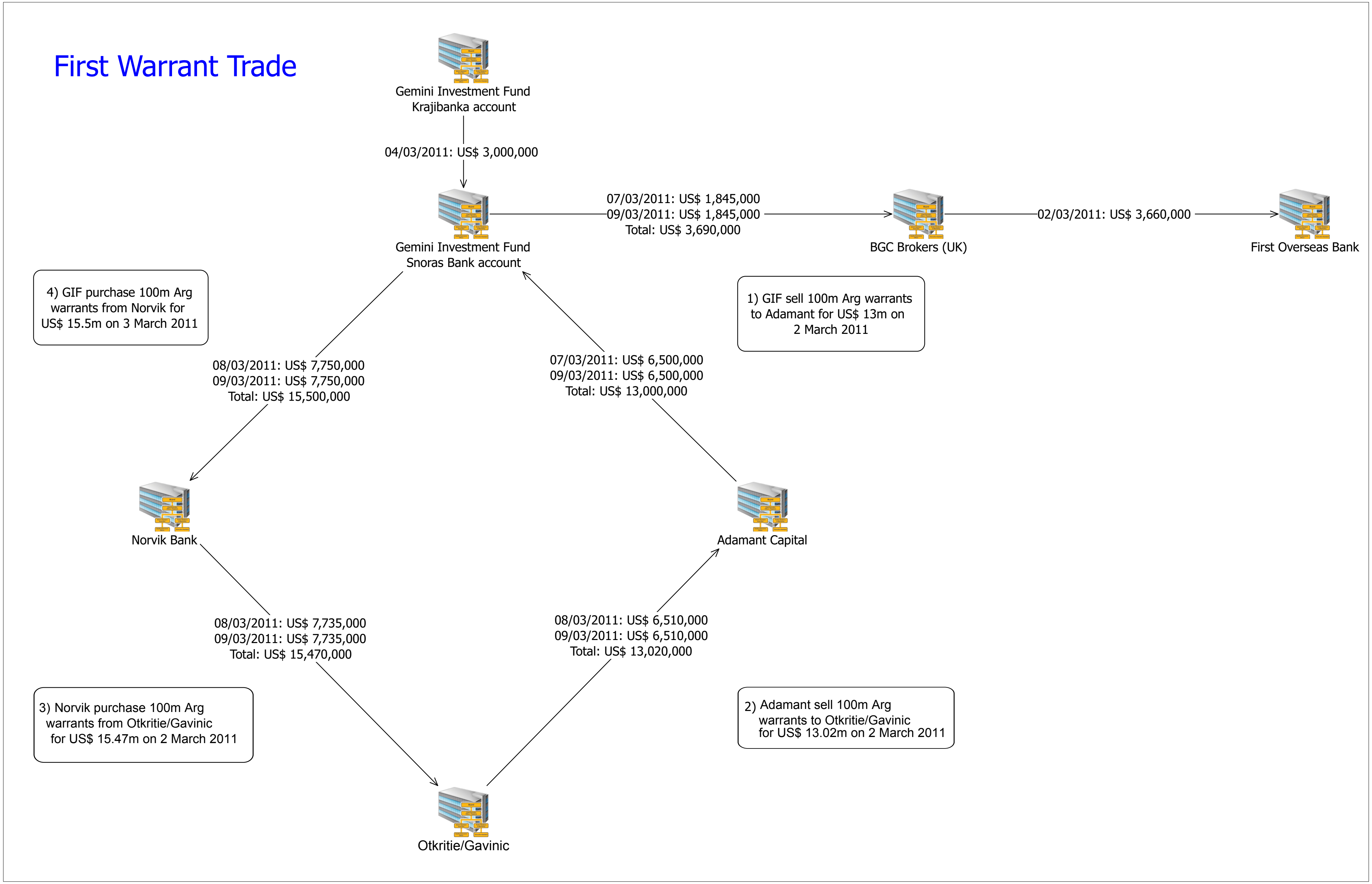
Sign On Proceeds and First Warrant Trade
Sign On Proceeds
Otkritie
US$ 1,000,000
23/11/2010: US$ 23,000,000
US$ 1,000,000
Nipun Ramaiya
Tenway International Ltd
George Urumov
01/12/2010: US$ 500,000
17/12/2010: US$ 18,890,000
02/12/2010: US$ 1,000,000
01/12/2010: US$ 2,532,680
Dorlcote Ltd (Mufti)
Denning Capital Ltd (Urumov)
Gherzi
PU Incorporated
16/02/2011: US$ 611,857
23/12/2010: US$ 543,000
22/12/2010: US$ 5,667,000
13/01/2011: US$ 5,552,889
29/12/2010: US$ 6,377,111
Primrose Corporation (Mujagic)
Soslan Guramovich Eldzarov
Firmly Oceans (Kondratyuk)
15/03/2011: US$ 500,000
15/03/2011: US$ 500,000
Rossmore Corporate Ltd (Pinaev)
Denning Capital (Urumov)
Pleator Holding (Pinaev)
Sun Rose Trading (Urumov)
22/02/2011: US$ 1,000,000
23/02/2011: US$ 500,000
Total: US$ 1,500,000
22/02/2011: US$ 1,000,000
23/02/2011: US$ 500,000
Total: U$ 1,500,000
Gemini Investment Fund Krajibanka account
First Warrant Trade
04/03/2011: US$ 3,000,000
Gemini Investment Fund Snoras Bank account
07/03/2011: US$ 1,845,000
09/03/2011: US$ 1,845,000
Total: US$ 3,690,000
BGC Brokers (UK)
02/03/2011: US$ 3,660,000
First Overseas Bank
4) GIF purchase 100m Arg warrants from Norvik for US$ 15.5m on 3 March 2011
08/03/2011: US$ 7,750,000
09/03/2011: US$ 7,750,000
Total: US$ 15,500,000
07/03/2011: US$ 6,500,000
09/03/2011: US$ 6,500,000
Total: US$ 13,000,000
1) GIF sell 100m Arg warrants to Adamant for US$ 13m on 2 March 2011
Use of dates:
The dates showing the transfer of the Sign On Proceeds amongst the defendants' companies are the bank statement dates (the date of instruction), not the value date (the date that the funds physically left the account).
The dates of the Argentinian warrants trades are the trade dates rather than the settlement dates.
Norvik Bank
Adamant Capital
08/03/2011: US$ 7,735,000
09/03/2011: US$ 7,735,000
Total: US$ 15,470,000
08/03/2011: US$ 6,510,000
09/03/2011: US$ 6,510,000
Total: US$ 13,020,000
3)Norvik purchase 100m Arg warrants from Otkritie/Gavinic for US$ 15.47m on 2 March 2011
2)Adamant sell 100m Arg warrants to Otkritie/Gavinic for US$ 13.02m on 2 March 2011
Otkritie/Gavinic

BACK

Sign On Proceeds

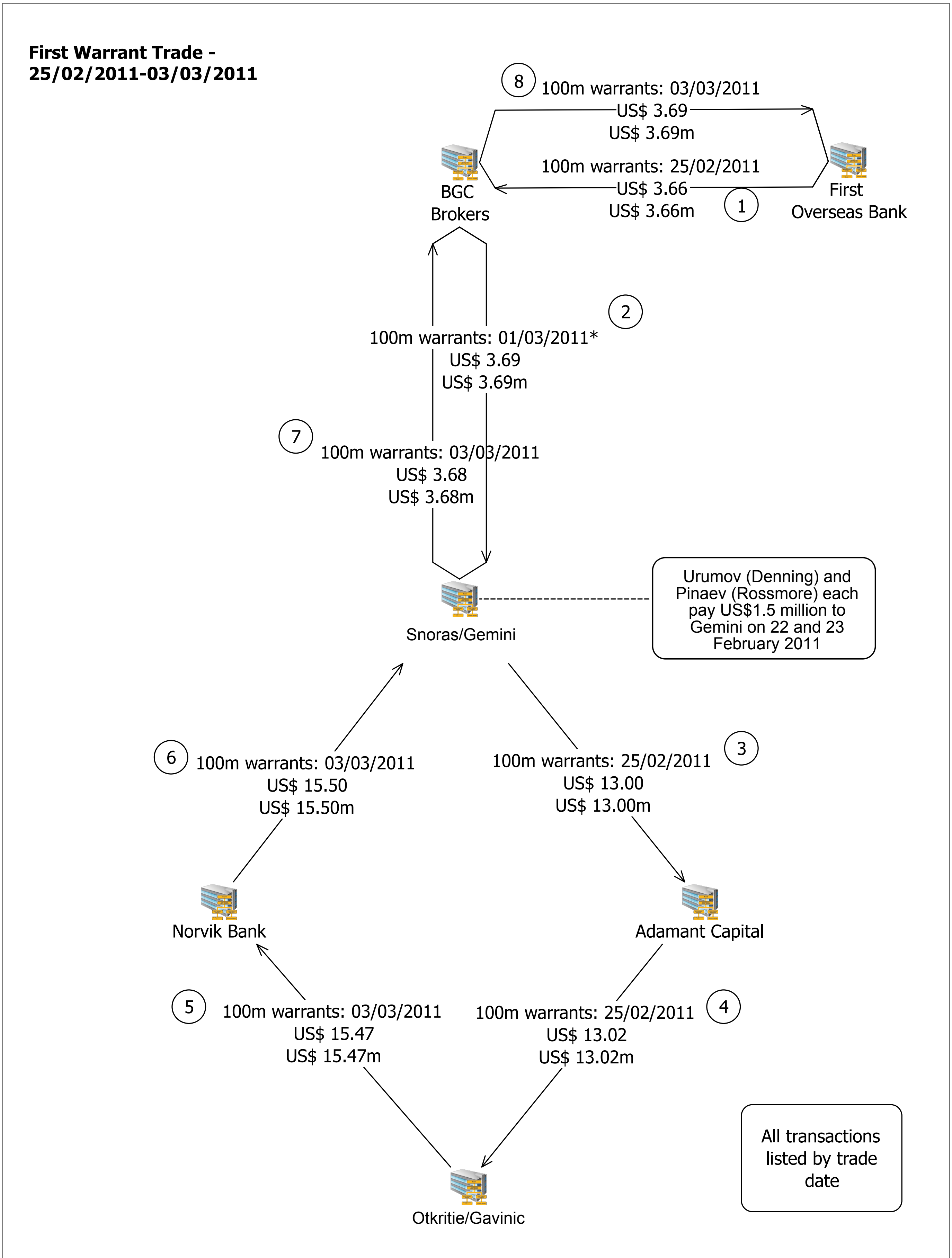


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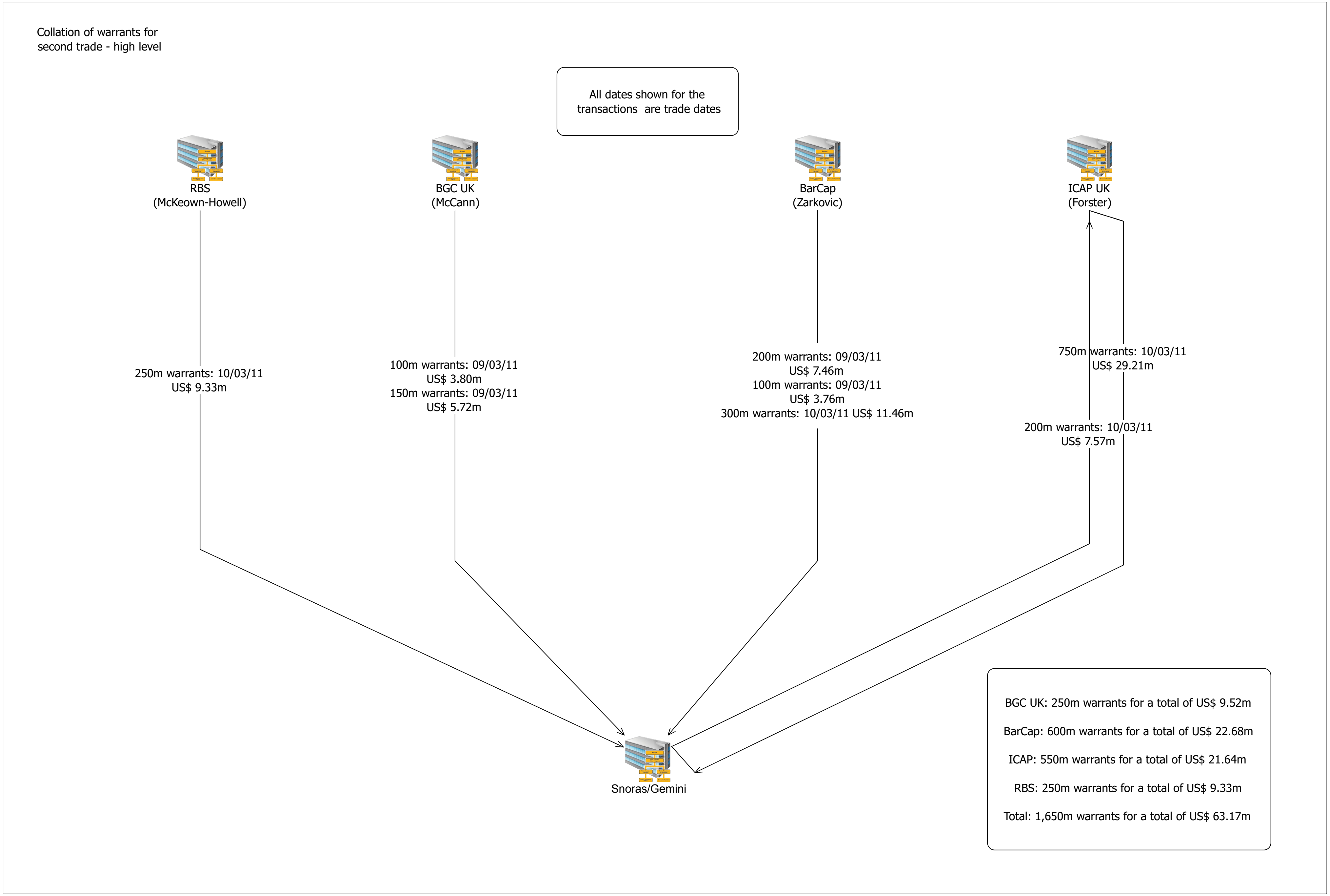
First Warrant Trade
Gemini Investment Fund
Krajibanka account
04/03/2011: US$ 3,000,000
07/03/2011: US$ 1,845,000
09/03/2011: US$ 1,845,000
Total: US$ 3,690,000
02/03/2011: US$ 3,660,000
Gemini Investment Fund
Snoras Bank account
BGC Brokers (UK)
First Overseas Bank
4) GIF purchase 100m Arg warrants from Norvik for US$ 15.5m on 3 March 2011
1) GIF sell 100m Arg warrants to Adamant for US$ 13m on 2 March 2011
08/03/2011: US$ 7,750,000
09/03/2011: US$ 7,750,000
Total: US$ 15,500,000
07/03/2011: US$ 6,500,000
09/03/2011: US$ 6,500,000
Total: US$ 13,000,000
Norvik Bank
Adamant Capital
08/03/2011: US$ 7,735,000
09/03/2011: US$ 7,735,000
Total: US$ 15,470,000
08/03/2011: US$ 6,510,000
09/03/2011: US$ 6,510,000
Total: US$ 13,020,000
3) Norvik purchase 100m Arg warrants from Otkritie/Gavinic for US$ 15.47m on 2 March 2011
2) Adamant sell 100m Arg warrants to Otkritie/Gavinic for US$ 13.02m on 2 March 2011
Otkritie/Gavinic

Figure 2



* On 25 February BGC did not have a direct trading line with Snoras bank and so posted an internal trade with trade date 25 February 2011 and settlement date 2 March 2011 to match the purchase from First Overseas. On 28 February a direct trading line between BGC and Snoras was established and on 1 March 2011 the internal trade was reversed and the sale to Snoras was confirmed with a trade date 1 March 2011 and settlement date 2 March 2011. The trades in the above chart were carried out on behalf of Gemini Investment Fund Limited, which had a client trading account at Snoras bank.

Figure 3



Collation of warrants for second trade - high level
All dates shown for the transactions are trade dates
RBS (McKeown-Howell)
BGC UK (McCann)
BarCap (Zarkovic)
ICAP UK (Forster)
250m warrants: 10/03/11 US$ 9.33m
100m warrants: 09/03/11 US$ 3.80m
150m warrants: 09/03/11 US$ 5.72m
200m warrants: 09/03/11 US$ 7.46m
100m warrants: 09/03/11 US$ 3.76m
300m warrants: 10/03/11 US$ 11.46m
750m warrants: 10/03/11 US$ 29.21m
200m warrants: 10/03/11 US$ 7.57m
Snoras/Gemini
BGC UK: 250m warrants for a total of US$ 9.52m
BarCap: 600m warrants for a total of US$ 22.68m
ICAP: 550m warrants for a total of US$ 21.64m
RBS: 250m warrants for a total of US$ 9.33m
Total: 1,650m warrants for a total of US$ 63.17m

Collation of warrants for second trade 24 May 2013

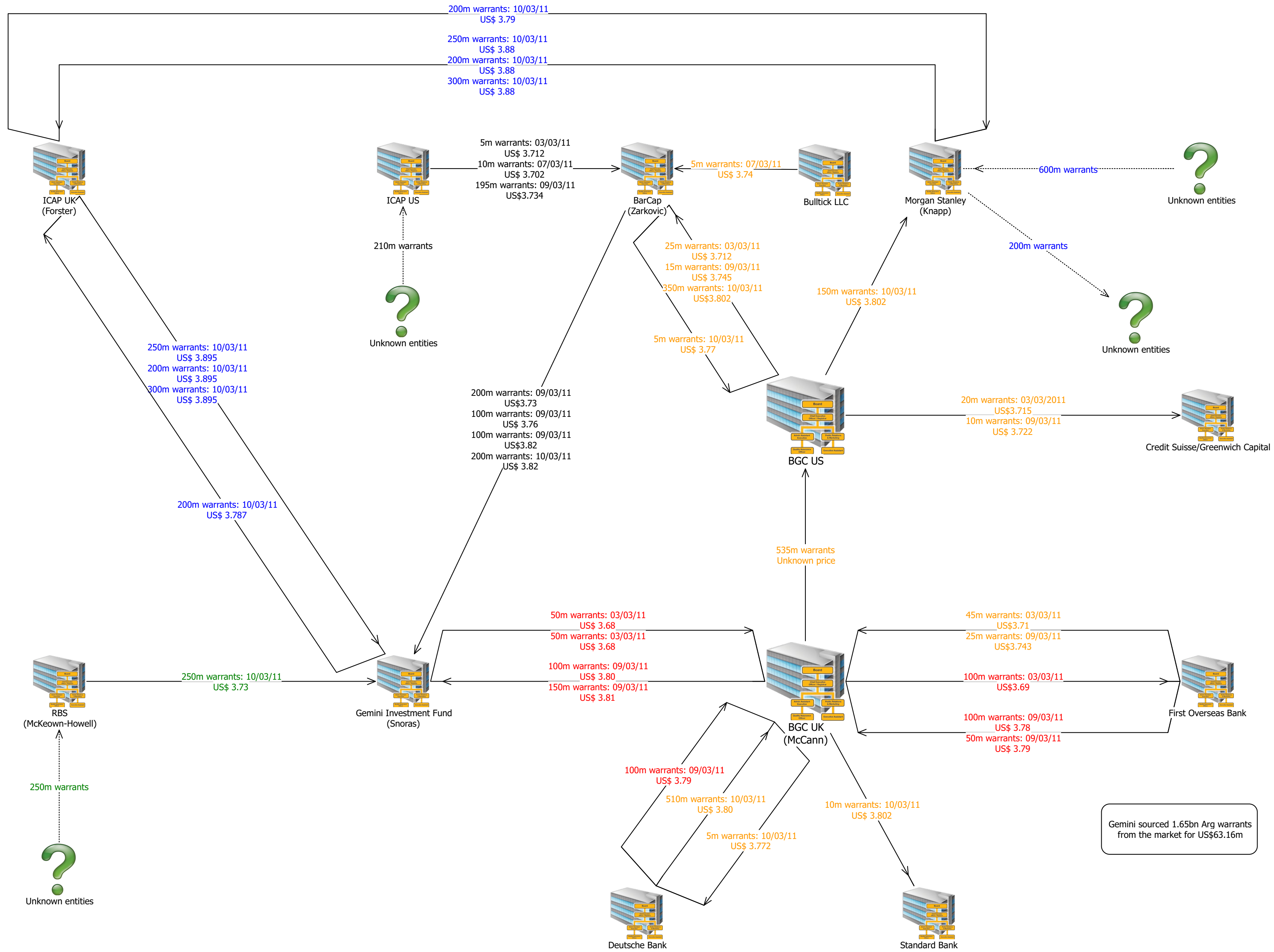


Figure 4

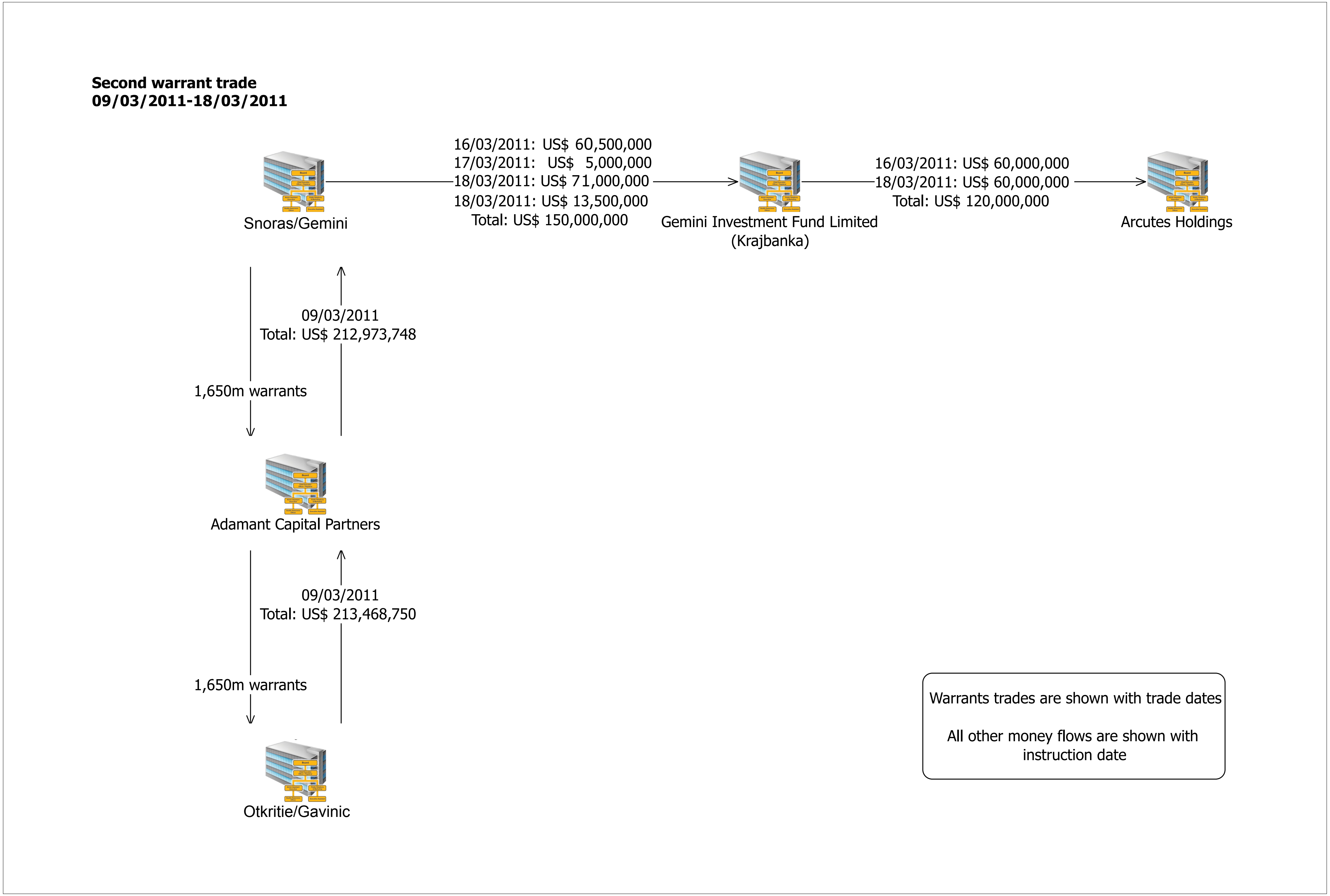
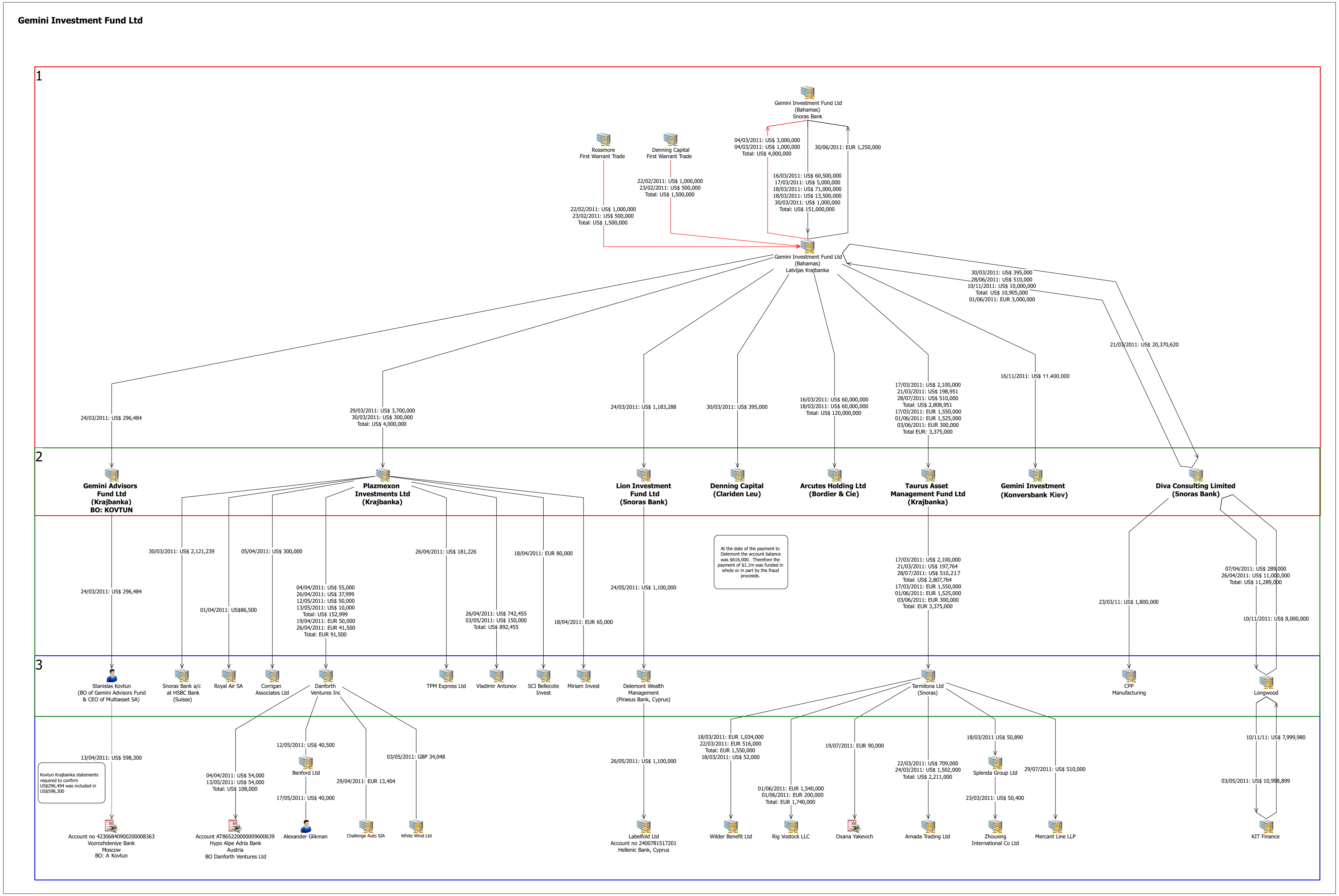
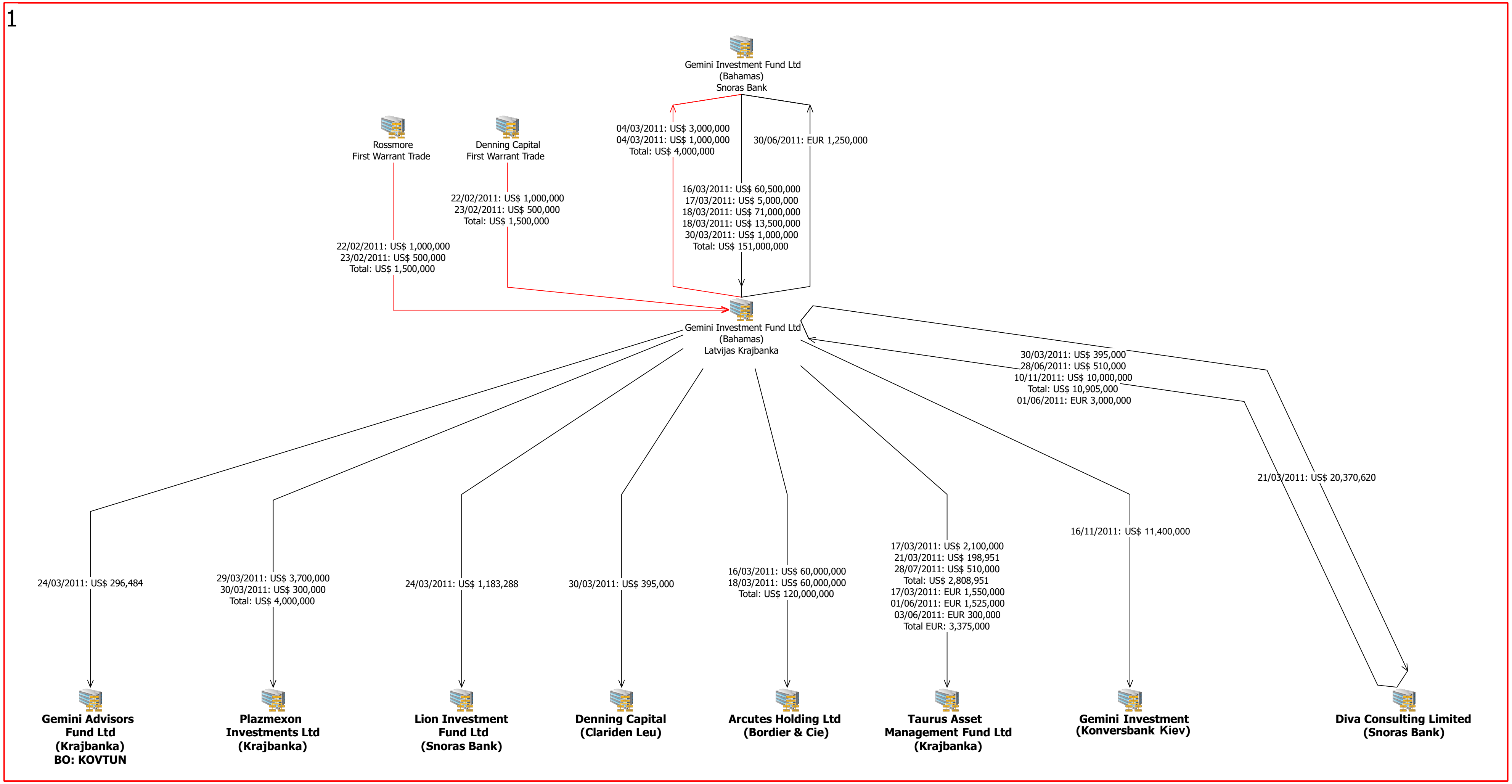

Second warrant trade
09/03/2011-18/03/2011
16/03/2011: US$ 60,500,000
17/03/2011: US$ 5,000,000
18/03/2011: US$ 71,000,000
18/03/2011: US$ 13,500,000
Total: US$ 150,000,000
16/03/2011: US$ 60,000,000
18/03/2011: US$ 60,000,000
Total: US$ 120,000,000
Snoras/Gemini
Gemini Investment Fund Limited
(Krajbanka)
Arcutes Holdings
09/03/2011
Total: US$ 212,973,748
1,650m warrants
Adamant Capital Partners
09/03/2011
Total: US$ 213,468,750
1,650m warrants
Otkritie/Gavinic
Warrants trades are shown with trade dates
All other money flows are shown with instruction date

Figure 5

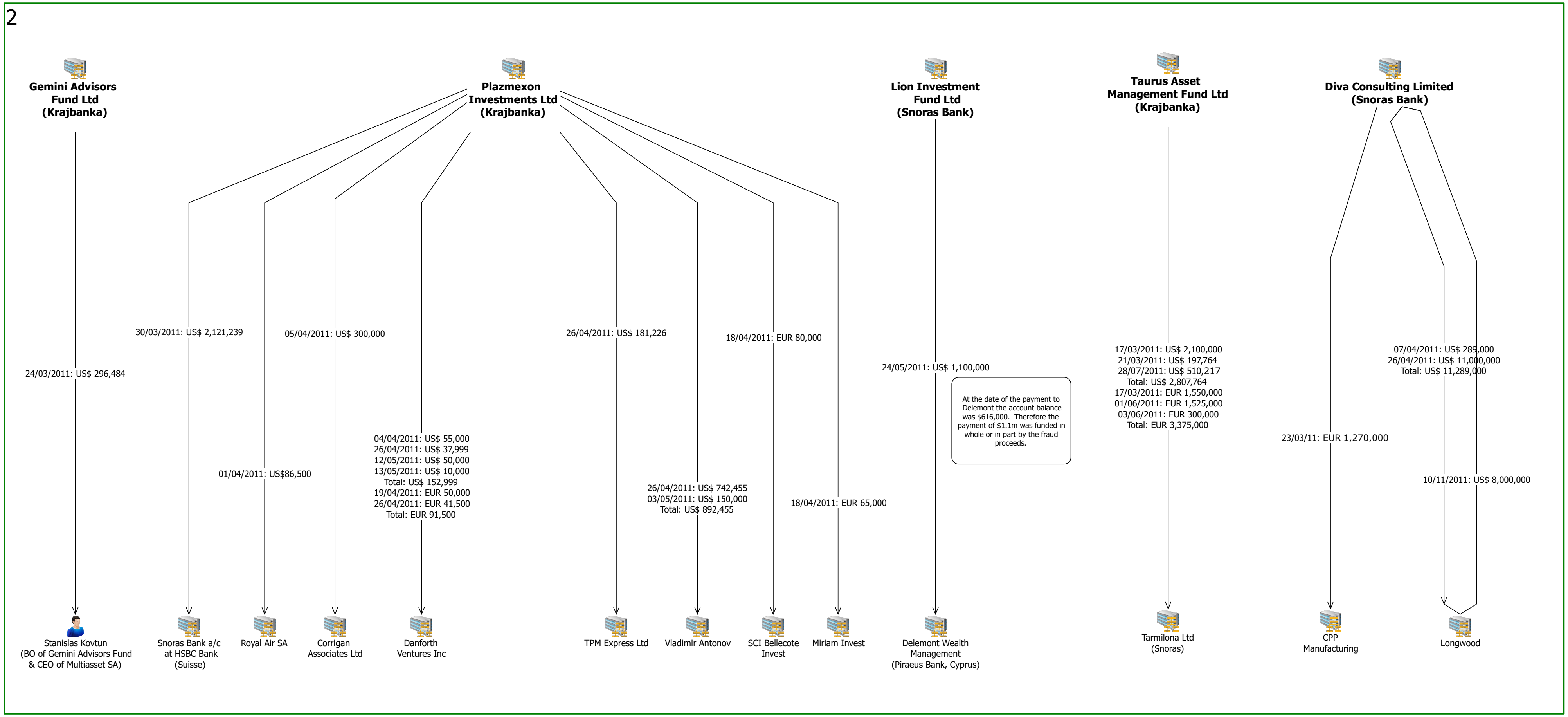


Gemini Investment Fund Ltd
1
Gemini Investment Fund Ltd (Bahamas) Snoras Bank
Rossmore First Warrant Trade
Denning Capital First Warrant Trade
04/03/2011: US$ 3,000,000 04/03/2011: US$ 1,000,000 Total: US$ 4,000,000
30/06/2011: EUR 1,250,000
22/02/2011: US$ 1,000,000 23/02/2011: US$ 500,000 Total: US$ 1,500,000
16/03/2011: US$ 60,500,000 17/03/2011: US$ 5,000,000 18/03/2011: US$ 71,000,000 18/03/2011: US$ 13,500,000 30/03/2011: US$ 1,000,000 Total: US$ 151,000,000
22/02/2011: US$ 1,000,000 23/02/2011: US$ 500,000 Total: US$ 1,500,000
Gemini Investment Fund Ltd (Bahamas) Latvijas Krajbanka
30/03/2011: US$ 395,000 28/06/2011: US$ 510,000 10/11/2011: US$ 10,000,000 Total: US$ 10,905,000 01/06/2011: EUR 3,000,000
21/03/2011: US$ 20,370,620
16/11/2011: US$ 11,400,000
17/03/2011: US$ 2,100,000 21/03/2011: US$ 198,951 28/07/2011: US$ 510,000 Total: US$ 2,808,951 17/03/2011: EUR 1,550,000 01/06/2011: EUR 1,525,000 03/06/2011: EUR 300,000 Total EUR: 3,375,000
24/03/2011: US$ 296,484
29/03/2011: US$ 3,700,000 30/03/2011: US$ 300,000 Total: US$ 4,000,000
24/03/2011: US$ 1,183,288
30/03/2011: US$ 395,000
16/03/2011: US$ 60,000,000 18/03/2011: US$ 60,000,000 Total: US$ 120,000,000
2
Gemini Advisors Fund Ltd (Krajbanka) BO: KOVTUN
Plazmexon Investments Ltd (Krajbanka)
Lion Investment Fund Ltd (Snoras Bank)
Denning Capital (Clariden Leu)
Arcutes Holding Ltd (Bordier & Cie)
Taurus Asset Management Fund Ltd (Krajbanka)
Gemini Investment (Konversbank Kiev)
Diva Consulting Limited (Snoras Bank)
30/03/2011: US$ 2,121,239
05/04/2011: US$ 300,000
26/04/2011: US$ 181,226
18/04/2011: EUR 80,000
At the date of the payment to Delemont the account balance was $616,000. Therefore the payment of $1.1m was funded in whole or in part by the fraud proceeds.
07/04/2011: US$ 289,000 26/04/2011: US$ 11,000,000 Total: US$ 11,289,000
24/03/2011: US$ 296,484
01/04/2011: US$86,500
04/04/2011: US$ 55,000 26/04/2011: US$ 37,999 12/05/2011: US$ 50,000 13/05/2011: US$ 10,000 Total: US$ 152,999 19/04/2011: EUR 50,000 26/04/2011: EUR 41,500 Total: EUR 91,500
26/04/2011: US$ 742,455 03/05/2011: US$ 150,000 Total: US$ 892,455
18/04/2011: EUR 65,000
24/05/2011: US$ 1,100,000
17/03/2011: US$ 2,100,000 21/03/2011: US$ 197,764 28/07/2011: US$ 510,217 Total: US$ 2,807,764 17/03/2011: EUR 1,550,000 01/06/2011: EUR 1,525,000 03/06/2011: EUR 300,000 Total: EUR 3,375,000
23/03/11: US$ 1,800,000
10/11/2011: US$ 8,000,000
3
Stanislas Kovtun (BO of Gemini Advisors Fund & CEO of Multiasset SA)
Snoras Bank a/c at HSBC Bank (Suisse)
Royal Air SA
Corrigan Associates Ltd
Danforth Ventures Inc
TPM Express Ltd
Vladimir Antonov
SCI Bellecote Invest
Miriam Invest
Delemont Wealth Management (Piraeus Bank, Cyprus)
Tarmilona Ltd (Snoras)
CPP Manufacturing
Longwood
13/04/2011: US$ 598,300
Kovtun Krajbanka statements required to confirm US$296,494 was included in US$598,300
12/05/2011: US$ 40,500
Benford Ltd
04/04/2011: US$ 54,000 13/05/2011: US$ 54,000 Total: US$ 108,000
29/04/2011: EUR 13,404
03/05/2011: GBP 34,048
17/05/2011: US$ 40,000
26/05/2011: US$ 1,100,000
18/03/2011: EUR 1,034,000 22/03/2011: EUR 516,000 Total: EUR 1,550,000 18/03/2011: US$ 52,000
19/07/2011: EUR 90,000
01/06/2011: EUR 1,540,000 01/06/2011: EUR 200,000 Total: EUR 1,740,000
22/03/2011: US$ 709,000 24/03/2011: US$ 1,502,000 Total: US$ 2,211,000
18/03/2011 US$ 50,890
Splenda Group Ltd
23/03/2011: US$ 50,400
29/07/2011: US$ 510,000
10/11/11: US$ 7,999,980
03/05/2011: US$ 10,998,899
Account no 42306840900200008363 Vozrozhdeniye Bank Moscow BO: A Kovtun
Account AT865220000009600639 Hypo Alpe Adria Bank Austria BO Danforth Ventures Ltd
Alexander Glikman
Challenge Auto SIA
White Wind Ltd
Labelfold Ltd Account no 2400781517201 Hellenic Bank, Cyprus
Wilder Benefit Ltd
Rig Vostock LLC
Oxana Yakevich
Arnada Trading Ltd
Zhouxing International Co Ltd
Mercant Line LLP
KIT Finance

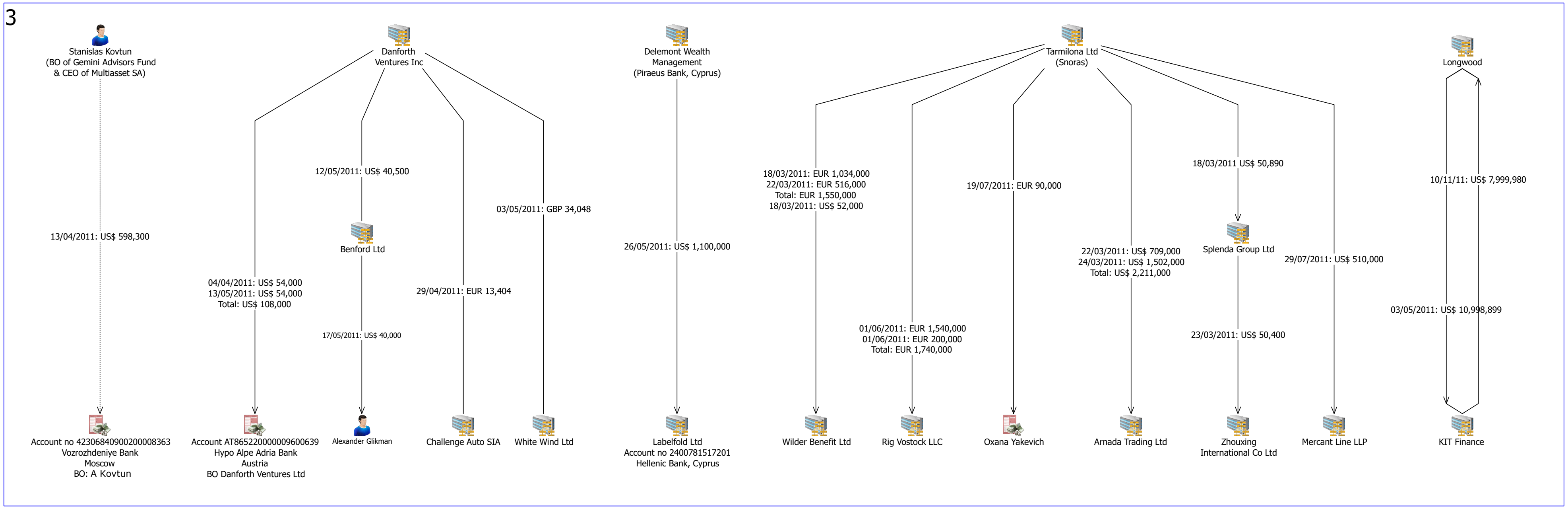
Back


1
Gemini Investment Fund Ltd
(Bahamas)
Snoras Bank
Rossmore
First Warrant Trade
Denning Capital
First Warrant Trade
04/03/2011: US$ 3,000,000
04/03/2011: US$ 1,000,000
Total: US$ 4,000,000
30/06/2011: EUR 1,250,000
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Total: US$ 1,500,000
16/03/2011: US$ 60,500,000
17/03/2011: US$ 5,000,000
18/03/2011: US$ 71,000,000
18/03/2011: US$ 13,500,000
30/03/2011: US$ 1,000,000
Total: US$ 151,000,000
22/02/2011: US$ 1,000,000
23/02/2011: US$ 500,000
Total: US$ 1,500,000
Gemini Investment Fund Ltd
(Bahamas)
Latvijas Krajbanka
30/03/2011: US$ 395,000
28/06/2011: US$ 510,000
10/11/2011: US$ 10,000,000
Total: US$ 10,905,000
01/06/2011: EUR 3,000,000
21/03/2011: US$ 20,370,620
16/11/2011: US$ 11,400,000
17/03/2011: US$ 2,100,000
21/03/2011: US$ 198,951
28/07/2011: US$ 510,000
Total: US$ 2,808,951
17/03/2011: EUR 1,550,000
01/06/2011: EUR 1,525,000
03/06/2011: EUR 300,000
Total EUR: 3,375,000
16/03/2011: US$ 60,000,000
18/03/2011: US$ 60,000,000
Total: US$ 120,000,000
24/03/2011: US$ 296,484
29/03/2011: US$ 3,700,000
30/03/2011: US$ 300,000
Total: US$ 4,000,000
24/03/2011: US$ 1,183,288
30/03/2011: US$ 395,000
Gemini Advisors Fund Ltd (Krajbanka) BO: KOVTUN
Plazmexon Investments Ltd (Krajbanka)
Lion Investment Fund Ltd (Snoras Bank)
Denning Capital (Clariden Leu)
Arcutes Holding Ltd (Bordier & Cie)
Taurus Asset Management Fund Ltd (Krajbanka)
Gemini Investment (Konversbank Kiev)
Diva Consulting Limited (Snoras Bank)

Back

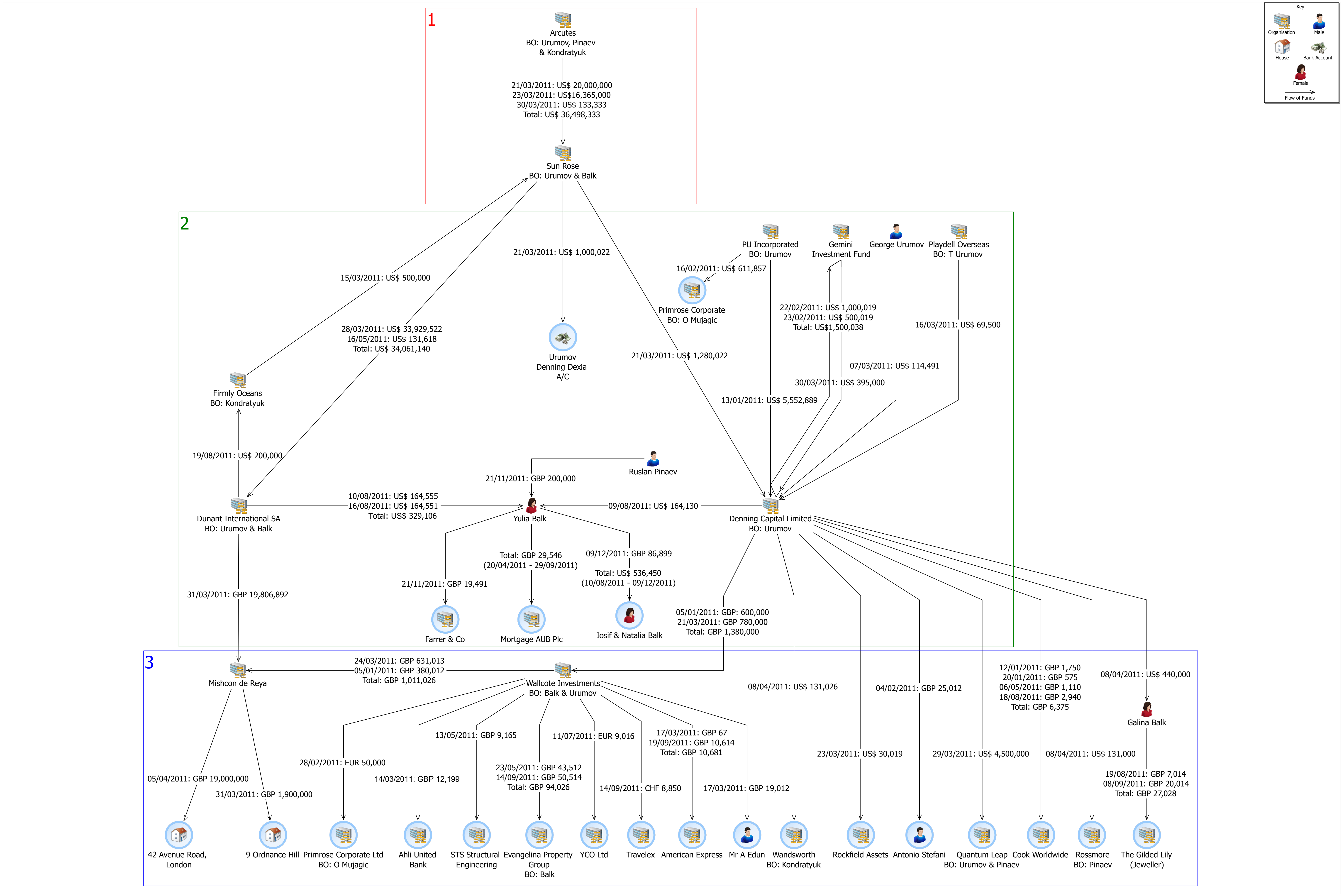

2
Gemini Advisors Fund Ltd (Krajbanka)
24/03/2011: US$ 296,484
Stanislas Kovtun (BO of Gemini Advisors Fund & CEO of Multiasset SA)
Plazmexon Investments Ltd (Krajbanka)
30/03/2011: US$ 2,121,239
Snoras Bank a/c at HSBC Bank (Suisse)
01/04/2011: US$86,500
Royal Air SA
05/04/2011: US$ 300,000
Corrigan Associates Ltd
04/04/2011: US$ 55,000
26/04/2011: US$ 37,999
12/05/2011: US$ 50,000
13/05/2011: US$ 10,000
Total: US$ 152,999
19/04/2011: EUR 50,000
26/04/2011: EUR 41,500
Total: EUR 91,500
Danforth Ventures Inc
26/04/2011: US$ 181,226
TPM Express Ltd
26/04/2011: US$ 742,455
03/05/2011: US$ 150,000
Total: US$ 892,455
Vladimir Antonov
18/04/2011: EUR 80,000
SCI Bellecote Invest
18/04/2011: EUR 65,000
Miriam Invest
Lion Investment Fund Ltd (Snoras Bank)
24/05/2011: US$ 1,100,000
At the date of the payment to Delemont the account balance was $616,000. Therefore the payment of $1.1m was funded in whole or in part by the fraud proceeds.
Delemont Wealth Management (Piraeus Bank, Cyprus)
Taurus Asset Management Fund Ltd (Krajbanka)
17/03/2011: US$ 2,100,000
21/03/2011: US$ 197,764
28/07/2011: US$ 510,217
Total: US$ 2,807,764
17/03/2011: EUR 1,550,000
01/06/2011: EUR 1,525,000
03/06/2011: EUR 300,000
Total: EUR 3,375,000
Tarmilona Ltd (Snoras)
Diva Consulting Limited (Snoras Bank)
23/03/11: EUR 1,270,000
CPP Manufacturing
07/04/2011: US$ 289,000
26/04/2011: US$ 11,000,000
Total: US$ 11,289,000
10/11/2011: US$ 8,000,000
Longwood

Back



3
Stanislas Kovtun
(BO of Gemini Advisors Fund
& CEO of Multiasset SA)
13/04/2011: US$ 598,300
Account no 42306840900200008363
Vozrozhdeniye Bank
Moscow
BO: A Kovtun
Danforth
Ventures Inc
04/04/2011: US$ 54,000
13/05/2011: US$ 54,000
Total: US$ 108,000
Account AT865220000009600639
Hypo Alpe Adria Bank
Austria
BO Danforth Ventures Ltd
12/05/2011: US$ 40,500
Benford Ltd
17/05/2011: US$ 40,000
Alexander Glikman
29/04/2011: EUR 13,404
Challenge Auto SIA
03/05/2011: GBP 34,048
White Wind Ltd
Delemont Wealth
Management
(Piraeus Bank, Cyprus)
26/05/2011: US$ 1,100,000
Labelfold Ltd
Account no 2400781517201
Hellenic Bank, Cyprus
Tarmilona Ltd
(Snoras)
18/03/2011: EUR 1,034,000
22/03/2011: EUR 516,000
Total: EUR 1,550,000
18/03/2011: US$ 52,000
Wilder Benefit Ltd
01/06/2011: EUR 1,540,000
01/06/2011: EUR 200,000
Total: EUR 1,740,000
Rig Vostock LLC
19/07/2011: EUR 90,000
Oxana Yakevich
22/03/2011: US$ 709,000
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23/03/2011: US$ 50,400
Zhouxing
International Co Ltd
29/07/2011: US$ 510,000
Mercant Line LLP
Longwood
10/11/11: US$ 7,999,980
03/05/2011: US$ 10,998,899
KIT Finance

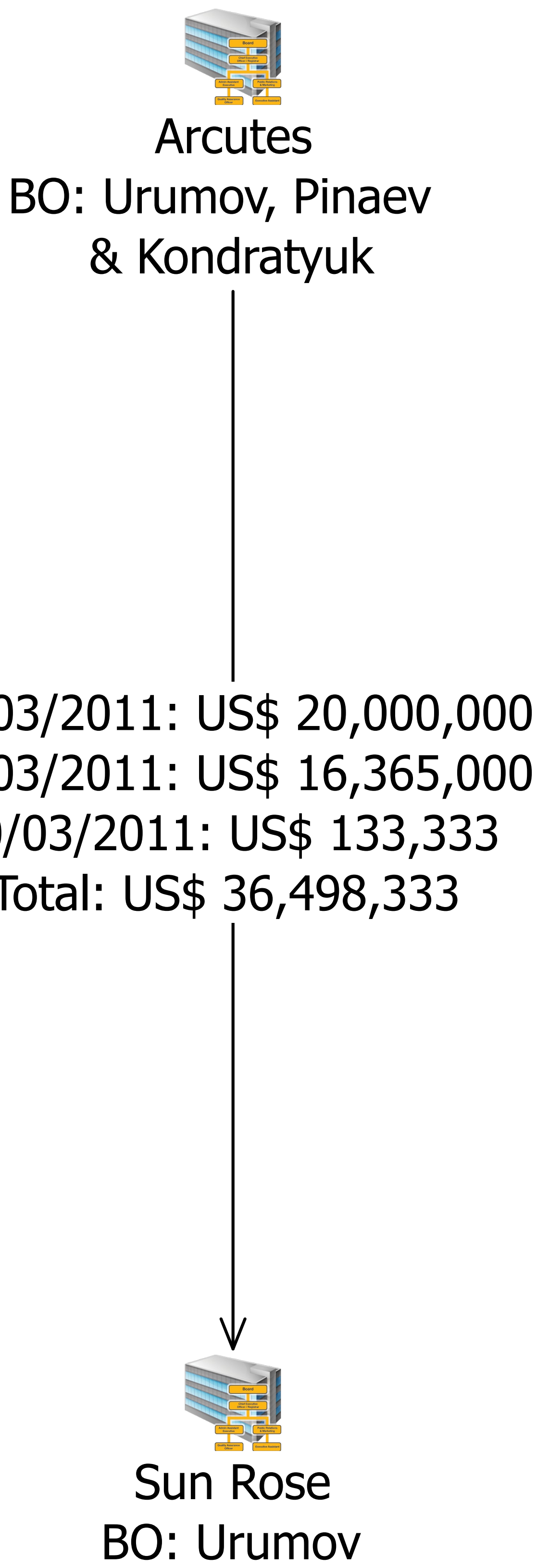
Figure 6



Key
Organisation
Male
House
Bank Account
Female
Flow of Funds
1
Arcutes
BO: Urumov, Pinaev
& Kondratyuk
21/03/2011: US$ 20,000,000
23/03/2011: US$16,365,000
30/03/2011: US$ 133,333
Total: US$ 36,498,333
Sun Rose
BO: Urumov & Balk
2
15/03/2011: US$ 500,000
28/03/2011: US$ 33,929,522
16/05/2011: US$ 131,618
Total: US$ 34,061,140
21/03/2011: US$ 1,000,022
Urumov
Denning Dexia
A/C
21/03/2011: US$ 1,280,022
PU Incorporated
BO: Urumov
Gemini
Investment Fund
George Urumov
Playdell Overseas
BO: T Urumov
16/02/2011: US$ 611,857
Primrose Corporate
BO: O Mujagic
22/02/2011: US$ 1,000,019
23/02/2011: US$ 500,019
Total: US$1,500,038
16/03/2011: US$ 69,500
07/03/2011: US$ 114,491
30/03/2011: US$ 395,000
13/01/2011: US$ 5,552,889
Firmly Oceans
BO: Kondratyuk
19/08/2011: US$ 200,000
Ruslan Pinaev
21/11/2011: GBP 200,000
Dunant International SA
BO: Urumov & Balk
10/08/2011: US$ 164,555
16/08/2011: US$ 164,551
Total: US$ 329,106
Yulia Balk
09/08/2011: US$ 164,130
Denning Capital Limited
BO: Urumov
Total: GBP 29,546
(20/04/2011 - 29/09/2011)
09/12/2011: GBP 86,899
Total: US$ 536,450
(10/08/2011 - 09/12/2011)
21/11/2011: GBP 19,491
31/03/2011: GBP 19,806,892
Farrer & Co
Mortgage AUB Plc
Iosif & Natalia Balk
05/01/2011: GBP: 600,000
21/03/2011: GBP 780,000
Total: GBP 1,380,000
3
Mishcon de Reya
24/03/2011: GBP 631,013
05/01/2011: GBP 380,012
Total: GBP 1,011,026
Wallcote Investments
BO: Balk & Urumov
08/04/2011: US$ 131,026
04/02/2011: GBP 25,012
12/01/2011: GBP 1,750
20/01/2011: GBP 575
06/05/2011: GBP 1,110
18/08/2011: GBP 2,940
Total: GBP 6,375
08/04/2011: US$ 440,000
Galina Balk
13/05/2011: GBP 9,165
11/07/2011: EUR 9,016
17/03/2011: GBP 67
19/09/2011: GBP 10,614
Total: GBP 10,681
28/02/2011: EUR 50,000
14/03/2011: GBP 12,199
23/05/2011: GBP 43,512
14/09/2011: GBP 50,514
Total: GBP 94,026
14/09/2011: CHF 8,850
17/03/2011: GBP 19,012
23/03/2011: US$ 30,019
29/03/2011: US$ 4,500,000
08/04/2011: US$ 131,000
19/08/2011: GBP 7,014
08/09/2011: GBP 20,014
Total: GBP 27,028
05/04/2011: GBP 19,000,000
31/03/2011: GBP 1,900,000
42 Avenue Road,
London
9 Ordnance Hill
Primrose Corporate Ltd
BO: O Mujagic
Ahli United
Bank
STS Structural
Engineering
Evangelina Property
Group
BO: Balk
YCO Ltd
Travelex
American Express
Mr A Edun
Wandsworth
BO: Kondratyuk
Rockfield Assets
Antonio Stefani
Quantum Leap
BO: Urumov & Pinaev
Cook Worldwide
Rossmore
BO: Pinaev
The Gilded Lily
(Jeweller)

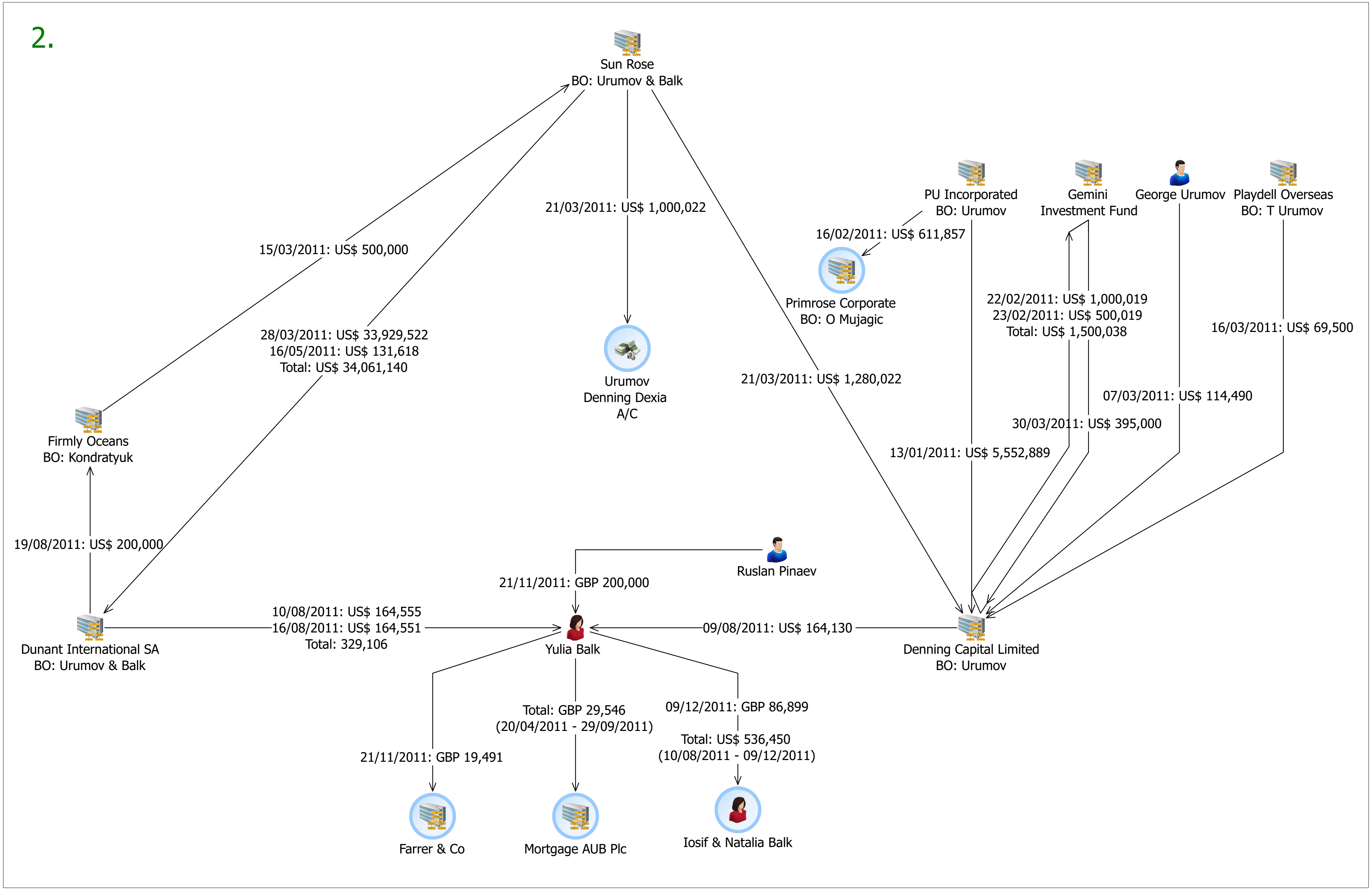
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1.


Arcutes
BO: Urumov, Pinaev
& Kondratyuk
21/03/2011: US$ 20,000,000
23/03/2011: US$ 16,365,000
30/03/2011: US$ 133,333
Total: US$ 36,498,333
Sun Rose
BO: Urumov

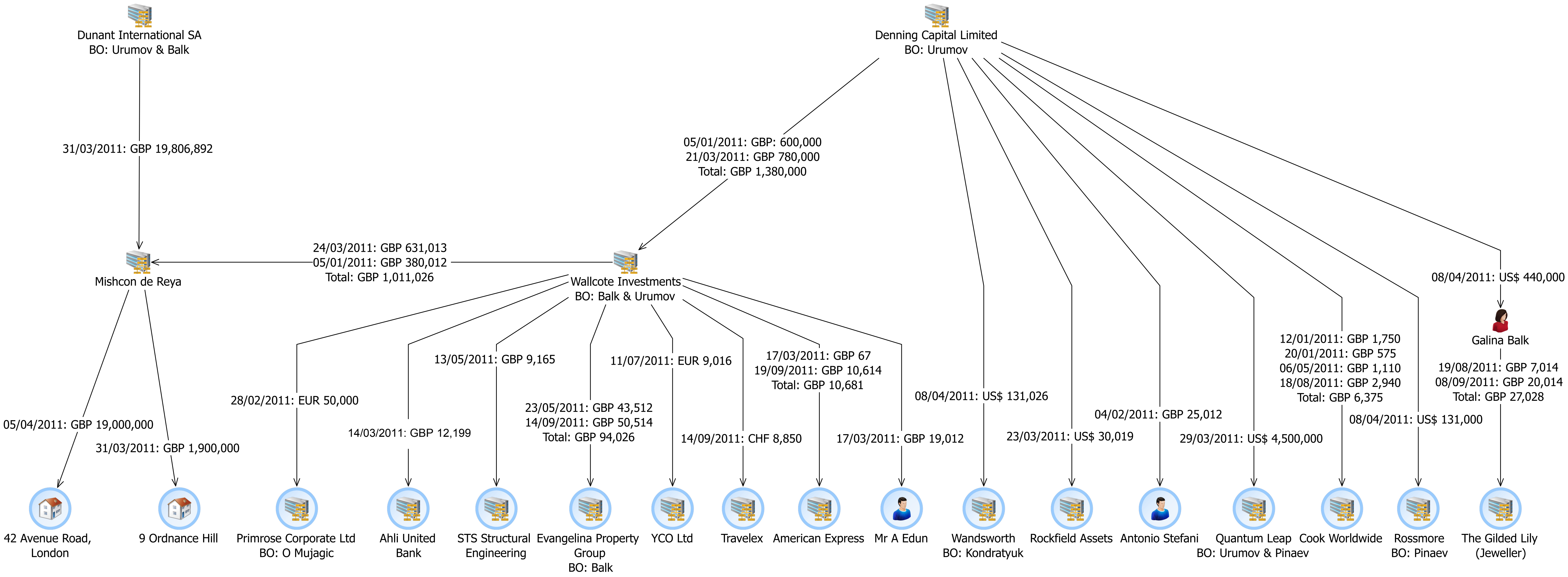
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2.


Sun Rose
BO: Urumov & Balk
15/03/2011: US$ 500,000
28/03/2011: US$ 33,929,522
16/05/2011: US$ 131,618
Total: US$ 34,061,140
21/03/2011: US$ 1,000,022
Urumov
Denning Dexia
A/C
21/03/2011: US$ 1,280,022
PU Incorporated
BO: Urumov
16/02/2011: US$ 611,857
Primrose Corporate
BO: O Mujagic
Gemini
Investment Fund
George Urumov
Playdell Overseas
BO: T Urumov
22/02/2011: US$ 1,000,019
23/02/2011: US$ 500,019
Total: US$ 1,500,038
16/03/2011: US$ 69,500
07/03/2011: US$ 114,490
30/03/2011: US$ 395,000
13/01/2011: US$ 5,552,889
Firmly Oceans
BO: Kondratyuk
19/08/2011: US$ 200,000
Ruslan Pinaev
21/11/2011: GBP 200,000
Dunant International SA
BO: Urumov & Balk
10/08/2011: US$ 164,555
16/08/2011: US$ 164,551
Total: 329,106
Yulia Balk
09/08/2011: US$ 164,130
Denning Capital Limited
BO: Urumov
Total: GBP 29,546
(20/04/2011 - 29/09/2011)
09/12/2011: GBP 86,899
Total: US$ 536,450
(10/08/2011 - 09/12/2011)
21/11/2011: GBP 19,491
Farrer & Co
Mortgage AUB Plc
Iosif & Natalia Balk

BACK

3.

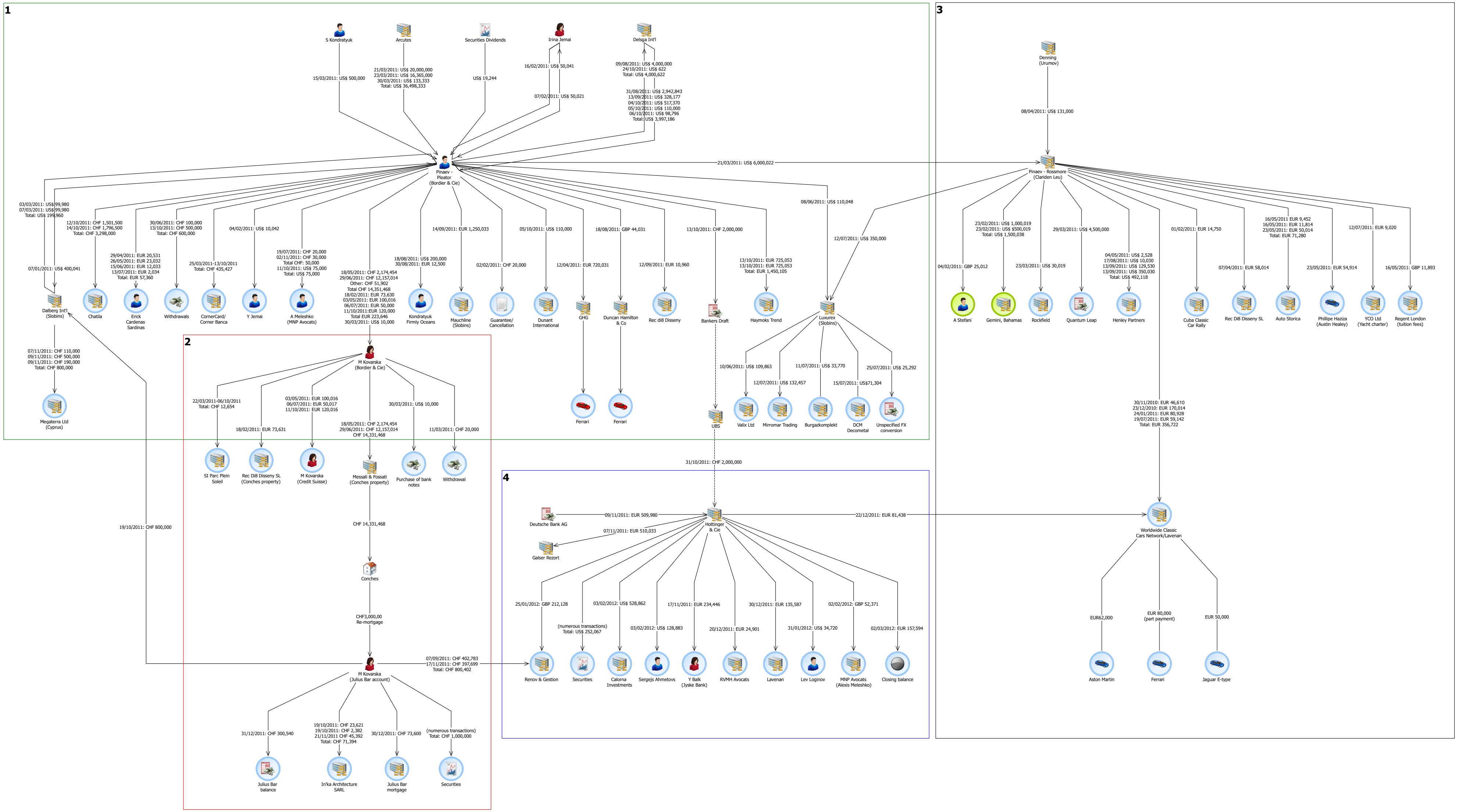


Dunant International SA
BO: Urumov & Balk
31/03/2011: GBP 19,806,892
Denning Capital Limited
BO: Urumov
05/01/2011: GBP: 600,000
21/03/2011: GBP 780,000
Total: GBP 1,380,000
Mishcon de Reya
24/03/2011: GBP 631,013
05/01/2011: GBP 380,012
Total: GBP 1,011,026
Wallcote Investments
BO: Balk & Urumov
05/04/2011: GBP 19,000,000
31/03/2011: GBP 1,900,000
28/02/2011: EUR 50,000
14/03/2011: GBP 12,199
13/05/2011: GBP 9,165
23/05/2011: GBP 43,512
14/09/2011: GBP 50,514
Total: GBP 94,026
11/07/2011: EUR 9,016
14/09/2011: CHF 8,850
17/03/2011: GBP 67
19/09/2011: GBP 10,614
Total: GBP 10,681
17/03/2011: GBP 19,012
08/04/2011: US$ 131,026
23/03/2011: US$ 30,019
04/02/2011: GBP 25,012
29/03/2011: US$ 4,500,000
12/01/2011: GBP 1,750
20/01/2011: GBP 575
06/05/2011: GBP 1,110
18/08/2011: GBP 2,940
Total: GBP 6,375
08/04/2011: US$ 131,000
08/04/2011: US$ 440,000
Galina Balk
19/08/2011: GBP 7,014
08/09/2011: GBP 20,014
Total: GBP 27,028
42 Avenue Road, London
9 Ordnance Hill
Primrose Corporate Ltd
BO: O Mujagic
Ahli United Bank
STS Structural Engineering
Evangelina Property Group
BO: Balk
YCO Ltd
Travelex
American Express
Mr A Edun
Wandsworth
BO: Kondratyuk
Rockfield Assets
Antonio Stefani
Quantum Leap
BO: Urumov & Pinaev
Cook Worldwide
Rossmore
BO: Pinaev
The Gilded Lily
(Jeweller)

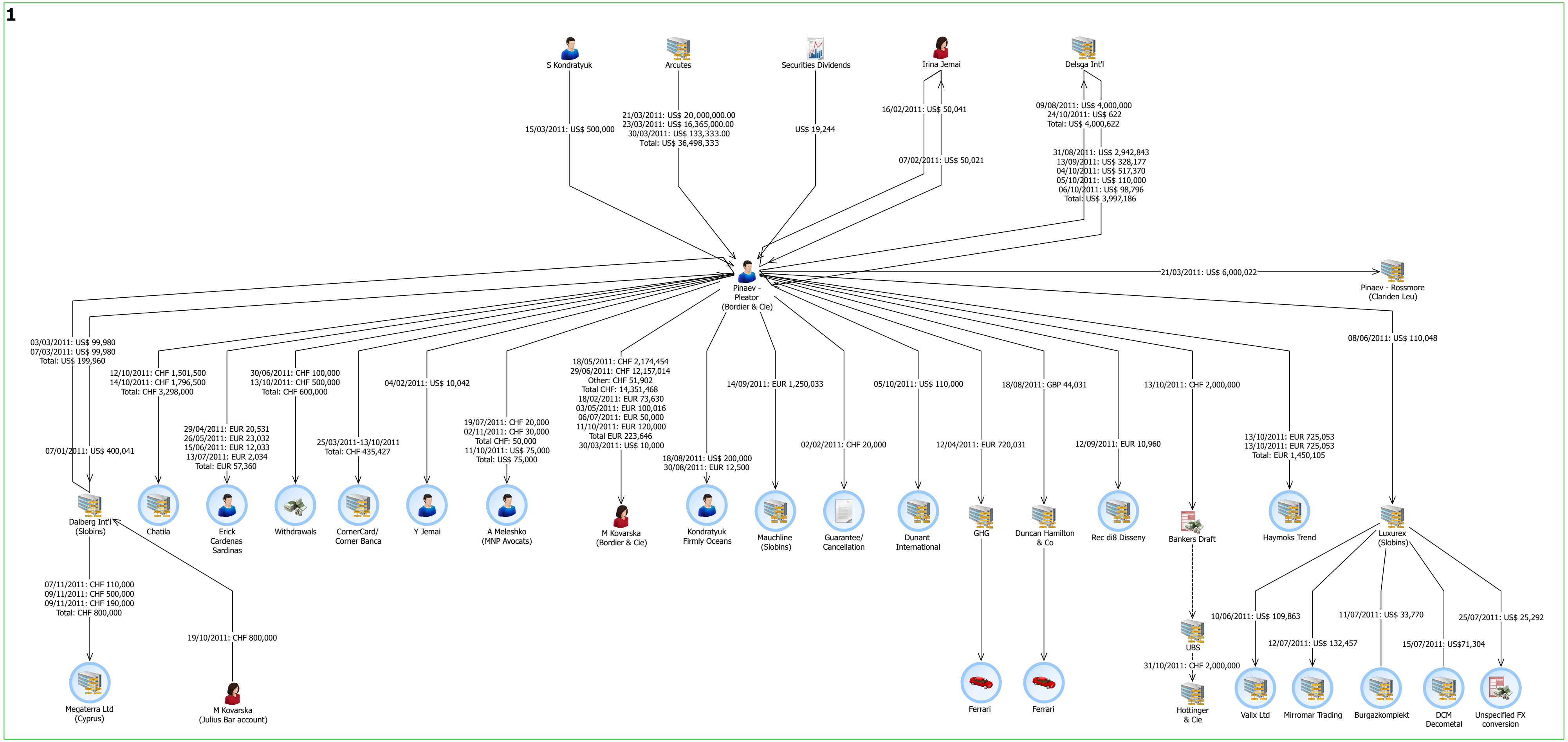
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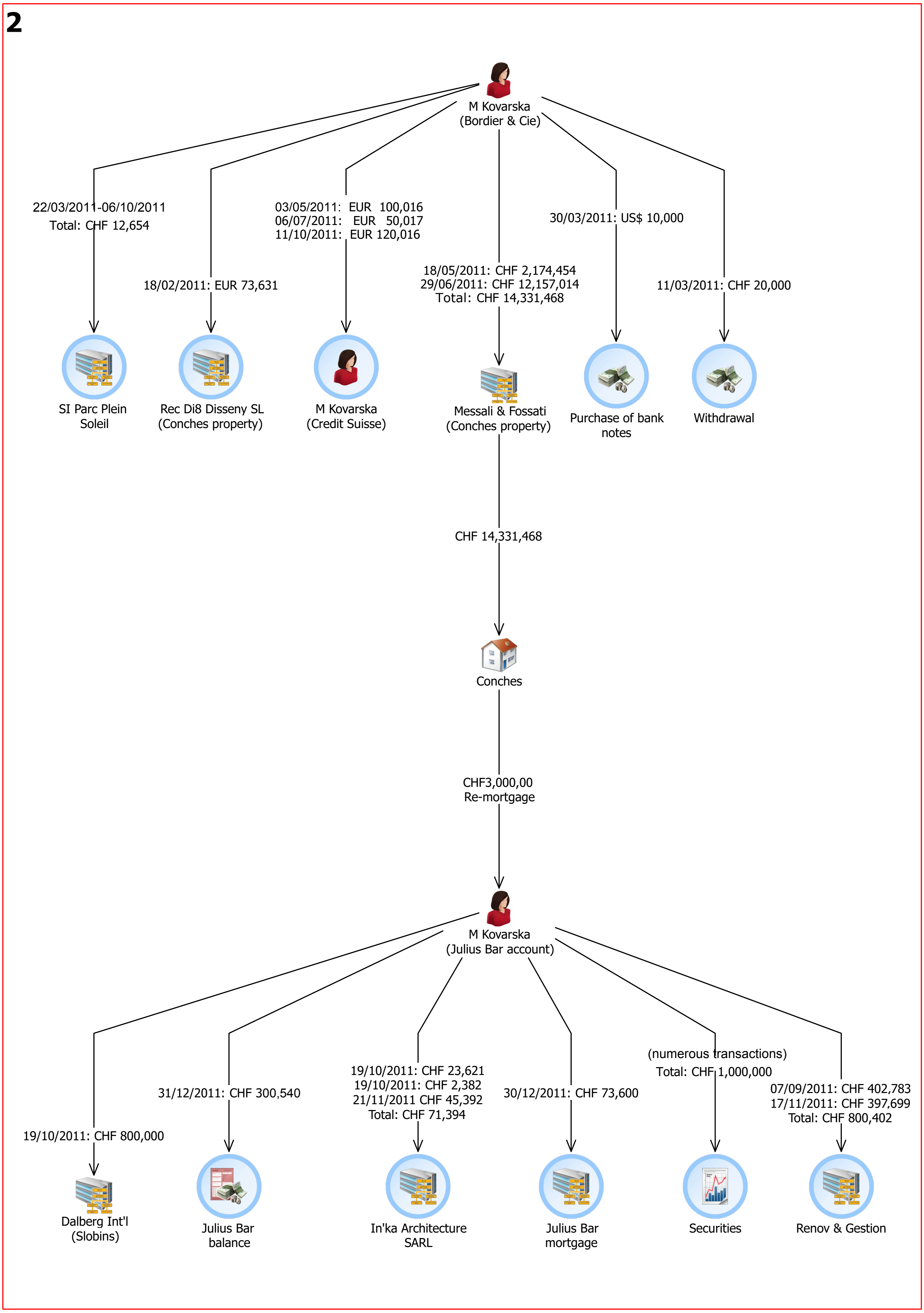
Flow of Funds: Pinaev



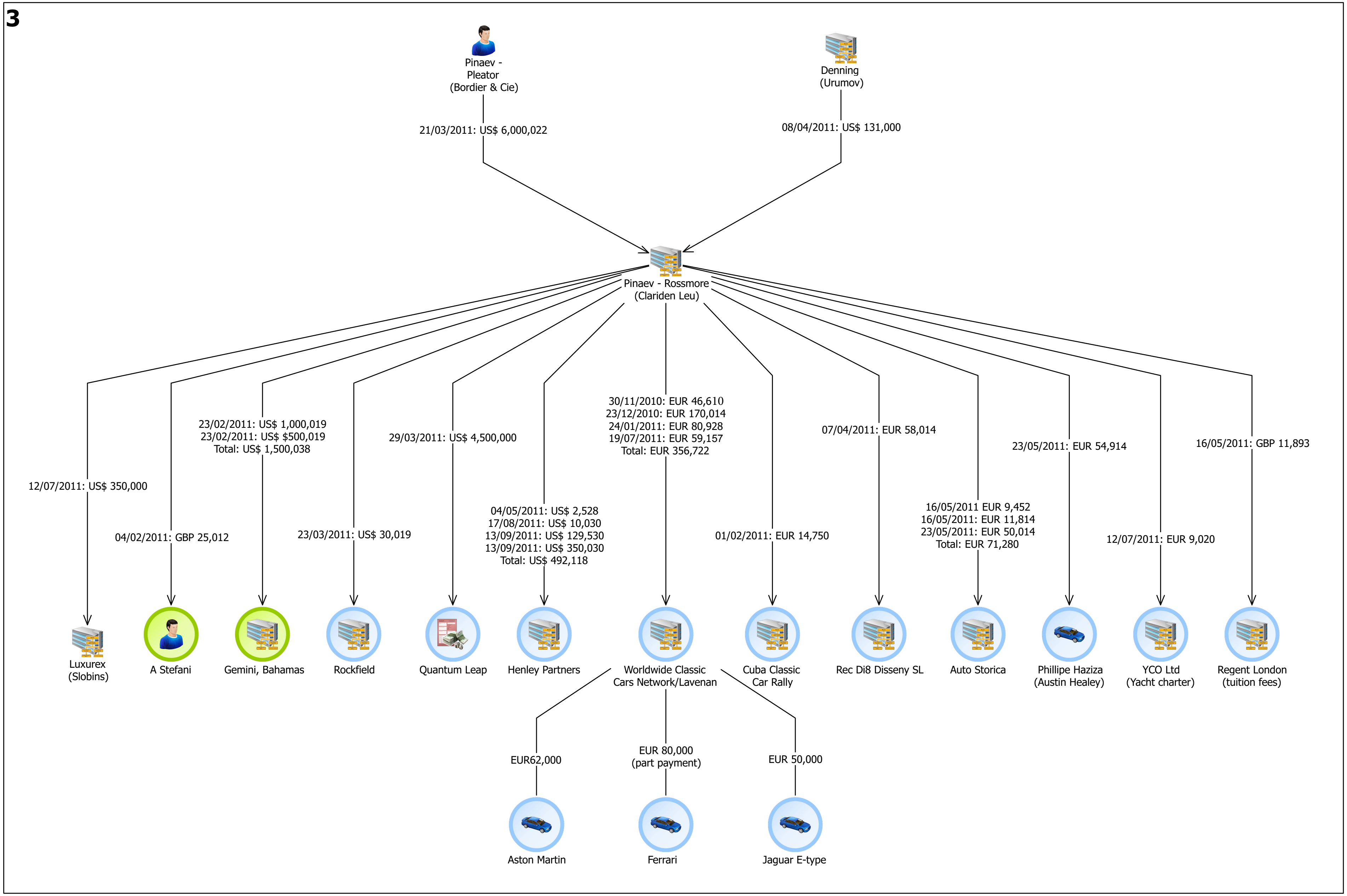
Back


1
S Kondratyuk
Arcutes
Securities Dividends
Irina Jemai
Delsga Int'l
15/03/2011: US$ 500,000
21/03/2011: US$ 20,000,000.00
23/03/2011: US$ 16,365,000.00
30/03/2011: US$ 133,333.00
Total: US$ 36,498,333
US$ 19,244
16/02/2011: US$ 50,041
07/02/2011: US$ 50,021
09/08/2011: US$ 4,000,000
24/10/2011: US$ 622
Total: US$ 4,000,622
31/08/2011: US$ 2,942,843
13/09/2011: US$ 328,177
04/10/2011: US$ 517,370
05/10/2011: US$ 110,000
06/10/2011: US$ 98,796
Total: US$ 3,997,186
Pinaev - Pleator (Bordier & Cie)
21/03/2011: US$ 6,000,022
Pinaev - Rossmore (Clariden Leu)
08/06/2011: US$ 110,048
03/03/2011: US$ 99,980
07/03/2011: US$ 99,980
Total: US$ 199,960
07/01/2011: US$ 400,041
12/10/2011: CHF 1,501,500
14/10/2011: CHF 1,796,500
Total: CHF 3,298,000
29/04/2011: EUR 20,531
26/05/2011: EUR 23,032
15/06/2011: EUR 12,033
13/07/2011: EUR 2,034
Total: EUR 57,360
30/06/2011: CHF 100,000
13/10/2011: CHF 500,000
Total: CHF 600,000
25/03/2011-13/10/2011
Total: CHF 435,427
04/02/2011: US$ 10,042
19/07/2011: CHF 20,000
02/11/2011: CHF 30,000
Total CHF: 50,000
11/10/2011: US$ 75,000
Total: US$ 75,000
18/05/2011: CHF 2,174,454
29/06/2011: CHF 12,157,014
Other: CHF 51,902
Total CHF: 14,351,468
18/02/2011: EUR 73,630
03/05/2011: EUR 100,016
06/07/2011: EUR 50,000
11/10/2011: EUR 120,000
Total EUR 223,646
30/03/2011: US$ 10,000
18/08/2011: US$ 200,000
30/08/2011: EUR 12,500
14/09/2011: EUR 1,250,033
02/02/2011: CHF 20,000
05/10/2011: US$ 110,000
12/04/2011: EUR 720,031
18/08/2011: GBP 44,031
12/09/2011: EUR 10,960
13/10/2011: CHF 2,000,000
13/10/2011: EUR 725,053
13/10/2011: EUR 725,053
Total: EUR 1,450,105
Dalberg Int'l (Slobins)
Chatila
Erick Cardenas Sardinas
Withdrawals
CornerCard/ Corner Banca
Y Jemai
A Meleshko (MNP Avocats)
M Kovarska (Bordier & Cie)
Kondratyuk Firmly Oceans
Mauchline (Slobins)
Guarantee/ Cancellation
Dunant International
GHG
Duncan Hamilton & Co
Rec di8 Disseny
Bankers Draft
Haymoks Trend
Luxurex (Slobins)
07/11/2011: CHF 110,000
09/11/2011: CHF 500,000
09/11/2011: CHF 190,000
Total: CHF 800,000
19/10/2011: CHF 800,000
Megaterra Ltd (Cyprus)
M Kovarska (Julius Bar account)
Ferrari
Ferrari
UBS
31/10/2011: CHF 2,000,000
Hottinger & Cie
10/06/2011: US$ 109,863
12/07/2011: US$ 132,457
11/07/2011: US$ 33,770
15/07/2011: US$71,304
25/07/2011: US$ 25,292
Valix Ltd
Mirromar Trading
Burgazkomplekt
DCM Decometal
Unspecified FX conversion

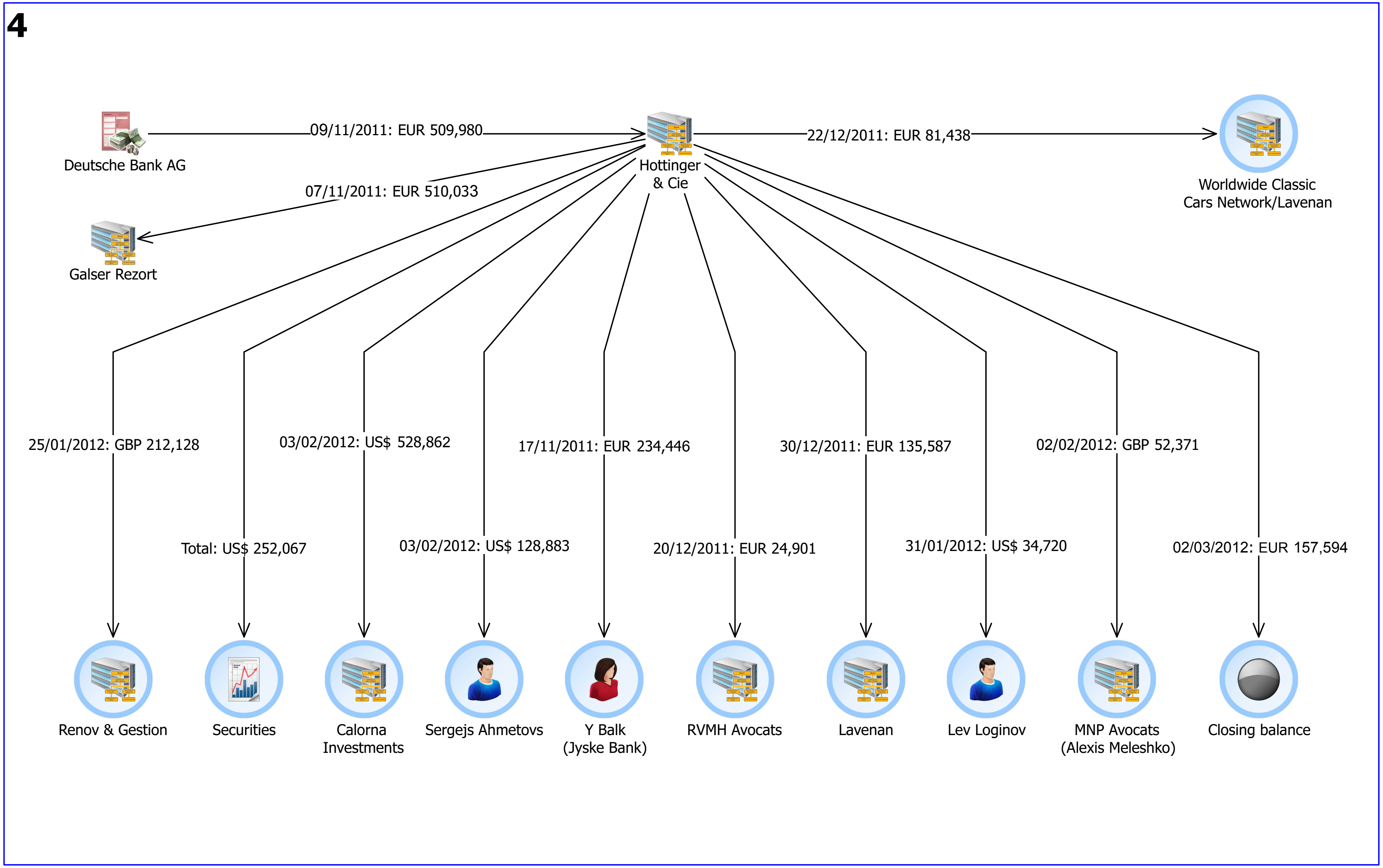
Back


2
M Kovarska
(Bordier & Cie)
22/03/2011-06/10/2011
Total: CHF 12,654
18/02/2011: EUR 73,631
03/05/2011: EUR 100,016
06/07/2011: EUR 50,017
11/10/2011: EUR 120,016
18/05/2011: CHF 2,174,454
29/06/2011: CHF 12,157,014
Total: CHF 14,331,468
30/03/2011: US$ 10,000
11/03/2011: CHF 20,000
SI Parc Plein
Soleil
Rec Di8 Disseny SL
(Conches property)
M Kovarska
(Credit Suisse)
Messali & Fossati
(Conches property)
Purchase of bank
notes
Withdrawal
CHF 14,331,468
Conches
CHF3,000,00
Re-mortgage
M Kovarska
(Julius Bar account)
19/10/2011: CHF 800,000
31/12/2011: CHF 300,540
19/10/2011: CHF 23,621
19/10/2011: CHF 2,382
21/11/2011 CHF 45,392
Total: CHF 71,394
30/12/2011: CHF 73,600
(numerous transactions)
Total: CHF 1,000,000
07/09/2011: CHF 402,783
17/11/2011: CHF 397,699
Total: CHF 800,402
Dalberg Int'l
(Slobins)
Julius Bar
balance
In'ka Architecture
SARL
Julius Bar
mortgage
Securities
Renov & Gestion

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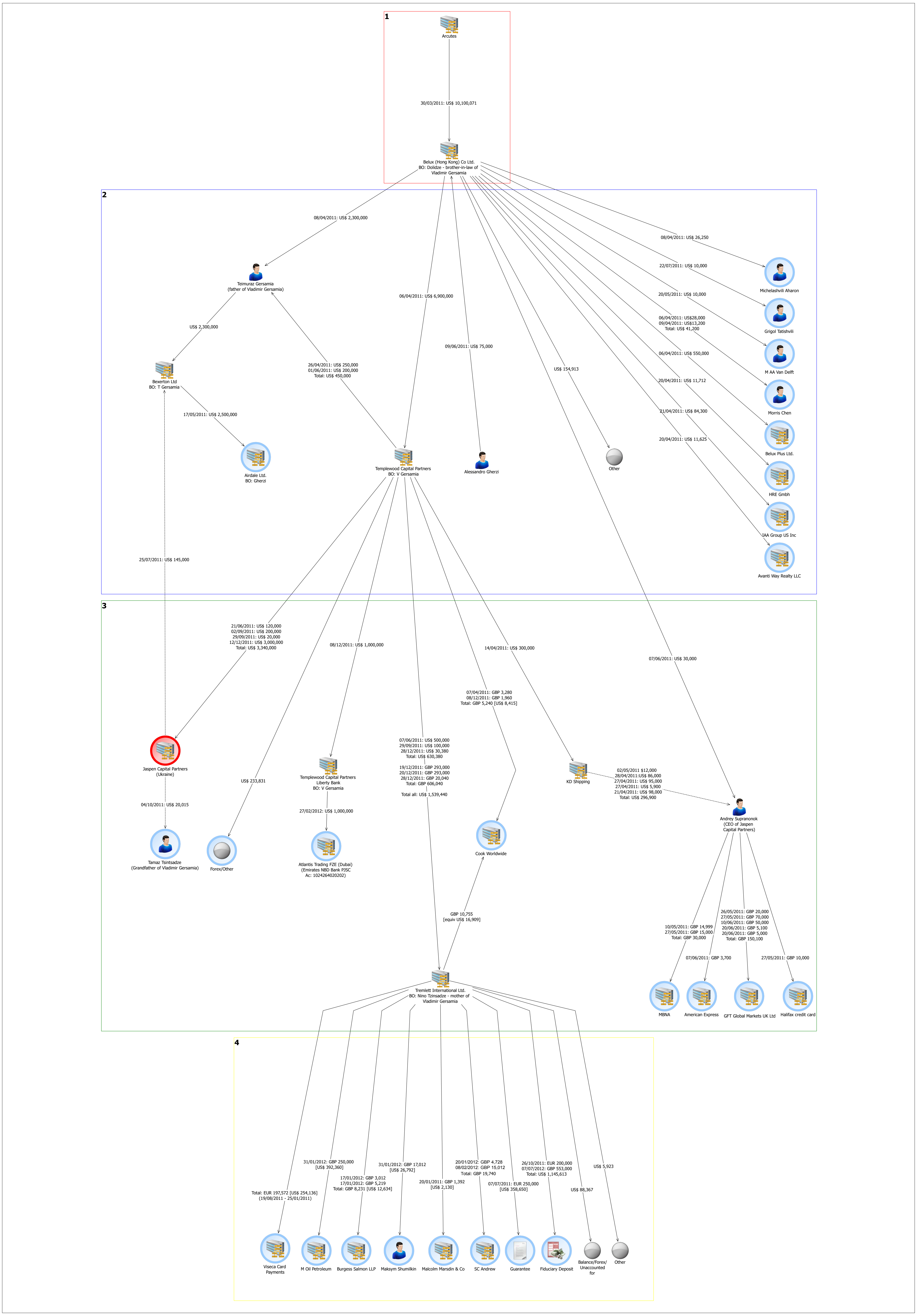

3
Pinaev - Pleator (Bordier & Cie)
Denning (Urumov)
21/03/2011: US$ 6,000,022
08/04/2011: US$ 131,000
Pinaev - Rossmore (Clariden Leu)
12/07/2011: US$ 350,000
04/02/2011: GBP 25,012
23/02/2011: US$ 1,000,019
23/02/2011: US$ $500,019
Total: US$ 1,500,038
23/03/2011: US$ 30,019
29/03/2011: US$ 4,500,000
04/05/2011: US$ 2,528
17/08/2011: US$ 10,030
13/09/2011: US$ 129,530
13/09/2011: US$ 350,030
Total: US$ 492,118
30/11/2010: EUR 46,610
23/12/2010: EUR 170,014
24/01/2011: EUR 80,928
19/07/2011: EUR 59,157
Total: EUR 356,722
01/02/2011: EUR 14,750
07/04/2011: EUR 58,014
16/05/2011 EUR 9,452
16/05/2011: EUR 11,814
23/05/2011: EUR 50,014
Total: EUR 71,280
23/05/2011: EUR 54,914
12/07/2011: EUR 9,020
16/05/2011: GBP 11,893
Luxurex (Slobins)
A Stefani
Gemini, Bahamas
Rockfield
Quantum Leap
Henley Partners
Worldwide Classic Cars Network/Lavenan
Cuba Classic Car Rally
Rec Di8 Disseny SL
Auto Storica
Phillipe Haziza (Austin Healey)
YCO Ltd (Yacht charter)
Regent London (tuition fees)
EUR62,000
EUR 80,000 (part payment)
EUR 50,000
Aston Martin
Ferrari
Jaguar E-type

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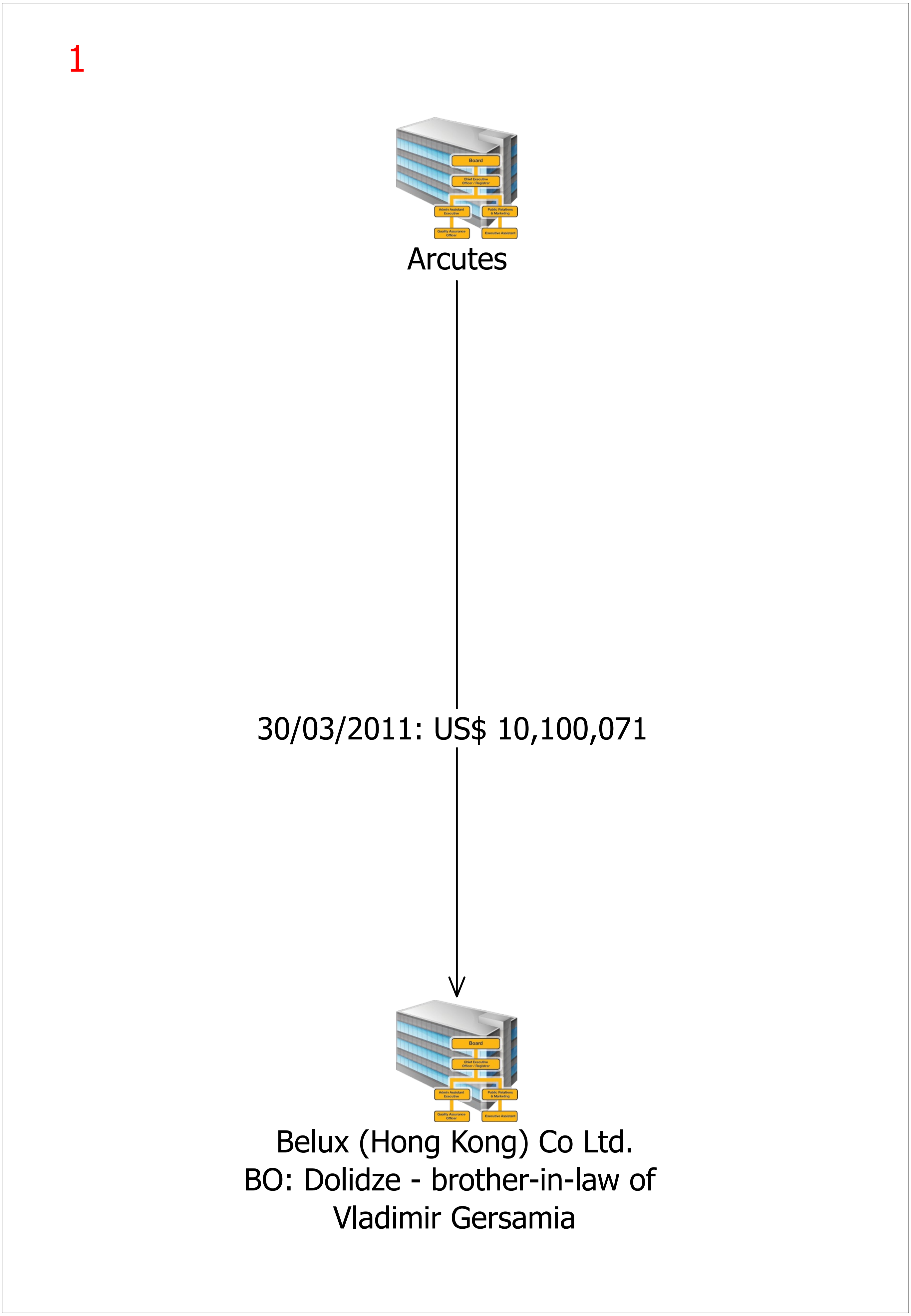
4
Deutsche Bank AG
09/11/2011: EUR 509,980
Hottinger & Cie
22/12/2011: EUR 81,438
Worldwide Classic Cars Network/Lavenan
07/11/2011: EUR 510,033
Galser Rezort
25/01/2012: GBP 212,128
Total: US$ 252,067
03/02/2012: US$ 528,862
03/02/2012: US$ 128,883
17/11/2011: EUR 234,446
20/12/2011: EUR 24,901
30/12/2011: EUR 135,587
31/01/2012: US$ 34,720
02/02/2012: GBP 52,371
02/03/2012: EUR 157,594
Renov & Gestion
Securities
Calorna Investments
Sergejs Ahmetovs
Y Balk (Jyske Bank)
RVMH Avocats
Lavenan
Lev Loginov
MNP Avocats (Alexis Meleshko)
Closing balance

Figure 8

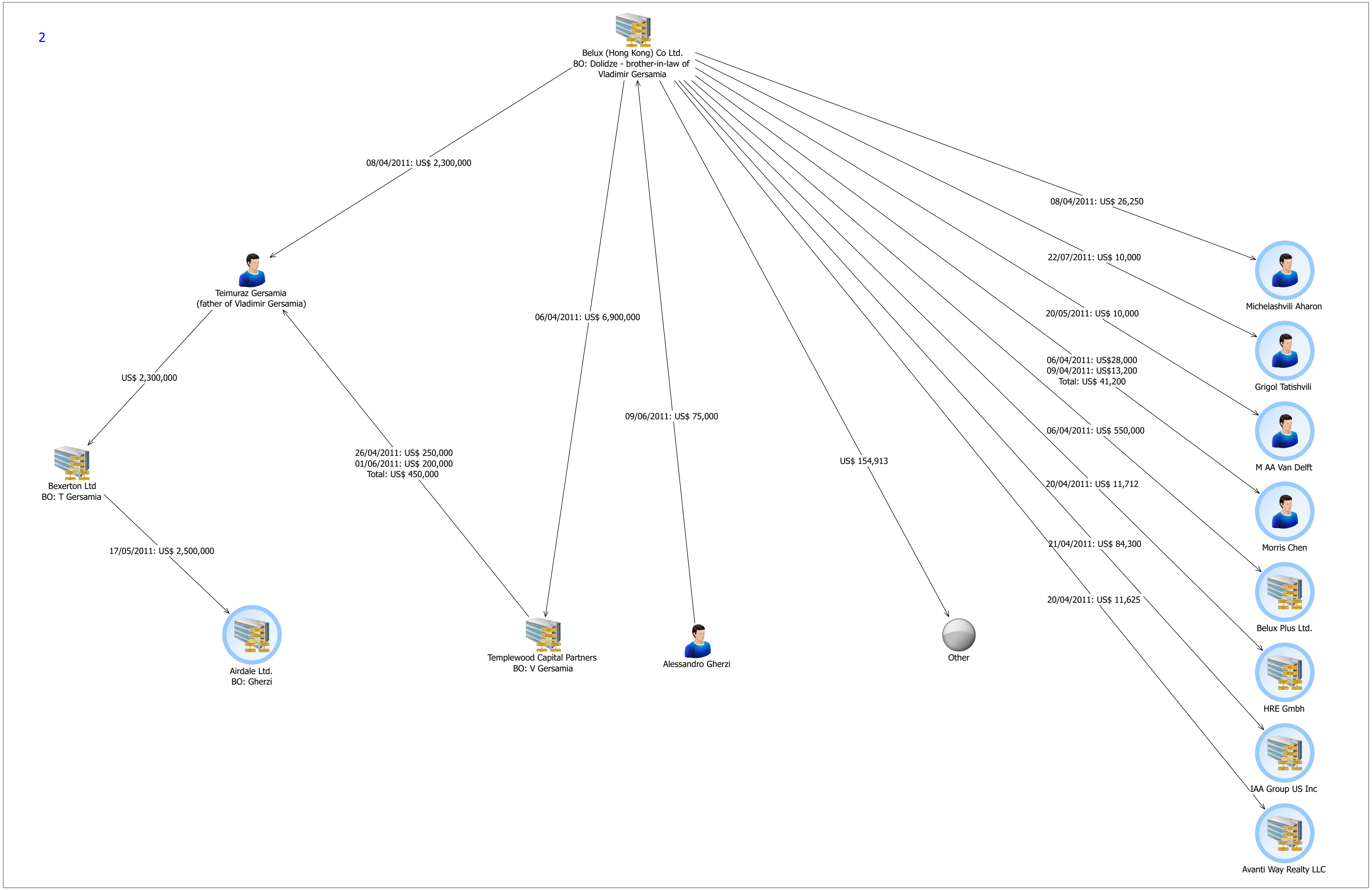


1
Arcutes
30/03/2011: US$ 10,100,071
Belux (Hong Kong) Co Ltd.
BO: Dolidze - brother-in-law of
Vladimir Gersamia
2
08/04/2011: US$ 2,300,000
Teimuraz Gersamia
(father of Vladimir Gersamia)
US$ 2,300,000
Bexerton Ltd
BO: T Gersamia
17/05/2011: US$ 2,500,000
Airdale Ltd.
BO: Gherzi
26/04/2011: US$ 250,000
01/06/2011: US$ 200,000
Total: US$ 450,000
06/04/2011: US$ 6,900,000
Templewood Capital Partners
BO: V Gersamia
09/06/2011: US$ 75,000
Alessandro Gherzi
US$ 154,913
Other
08/04/2011: US$ 26,250
Michelashvili Aharon
22/07/2011: US$ 10,000
Grigol Tatishvili
20/05/2011: US$ 10,000
M AA Van Delft
06/04/2011: US$28,000
09/04/2011: US$13,200
Total: US$ 41,200
Morris Chen
06/04/2011: US$ 550,000
Belux Plus Ltd.
20/04/2011: US$ 11,712
HRE Gmbh
21/04/2011: US$ 84,300
IAA Group US Inc
20/04/2011: US$ 11,625
Avanti Way Realty LLC
25/07/2011: US$ 145,000
3
21/06/2011: US$ 120,000
02/09/2011: US$ 200,000
29/09/2011: US$ 20,000
12/12/2011: US$ 3,000,000
Total: US$ 3,340,000
08/12/2011: US$ 1,000,000
14/04/2011: US$ 300,000
07/06/2011: US$ 30,000
07/04/2011: GBP 3,280
08/12/2011: GBP 1,960
Total: GBP 5,240 [US$ 8,415]
Jaspen Capital Partners
(Ukraine)
04/10/2011: US$ 20,015
Tamaz Tsintsadze
(Grandfather of Vladimir Gersamia)
US$ 233,831
Forex/Other
Templewood Capital Partners
Liberty Bank
BO: V Gersamia
27/02/2012: US$ 1,000,000
Atlantis Trading FZE (Dubai)
(Emirates NBD Bank PJSC
Ac: 1024264020202)
07/06/2011: US$ 500,000
29/09/2011: US$ 100,000
28/12/2011: US$ 30,380
Total: US$ 630,380
19/12/2011: GBP 293,000
20/12/2011: GBP 293,000
28/12/2011: GBP 20,040
Total: GBP 606,040
Total all: US$ 1,539,440
Cook Worldwide
KD Shipping
02/05/2011 $12,000
28/04/2011:US$ 86,000
27/04/2011: US$ 95,000
27/04/2011: US$ 5,900
21/04/2011: US$ 98,000
Total: US$ 296,900
Andrey Supranonok
(CEO of Jaspen
Capital Partners)
GBP 10,755
[equiv US$ 16,909]
10/05/2011: GBP 14,999
27/05/2011: GBP 15,000
Total: GBP 30,000
07/06/2011: GBP 3,700
26/05/2011: GBP 20,000
27/05/2011: GBP 70,000
10/06/2011: GBP 50,000
20/06/2011: GBP 5,100
20/06/2011: GBP 5,000
Total: GBP 150,100
27/05/2011: GBP 10,000
Tremlett International Ltd.
BO: Nino Tzinsadze - mother of
Vladimir Gersamia
MBNA
American Express
GFT Global Markets UK Ltd
Halifax credit card
4
Total: EUR 197,572 [US$ 254,136]
(19/08/2011 - 25/01/2011)
31/01/2012: GBP 250,000
[US$ 392,360]
17/01/2012: GBP 3,012
17/01/2012: GBP 5,219
Total: GBP 8,231 [US$ 12,634]
31/01/2012: GBP 17,012
[US$ 26,792]
20/01/2011: GBP 1,392
[US$ 2,130]
20/01/2012: GBP 4,728
08/02/2012: GBP 15,012
Total: GBP 19,740
07/07/2011: EUR 250,000
[US$ 358,650]
26/10/2011: EUR 200,000
07/07/2012: GBP 553,000
Total: US$ 1,145,613
US$ 88,367
US$ 5,923
Viseca Card
Payments
M Oil Petroleum
Burgess Salmon LLP
Maksym Shumilkin
Malcolm Marsdin & Co
SC Andrew
Guarantee
Fiduciary Deposit
Balance/Forex/
Unaccounted
for
Other

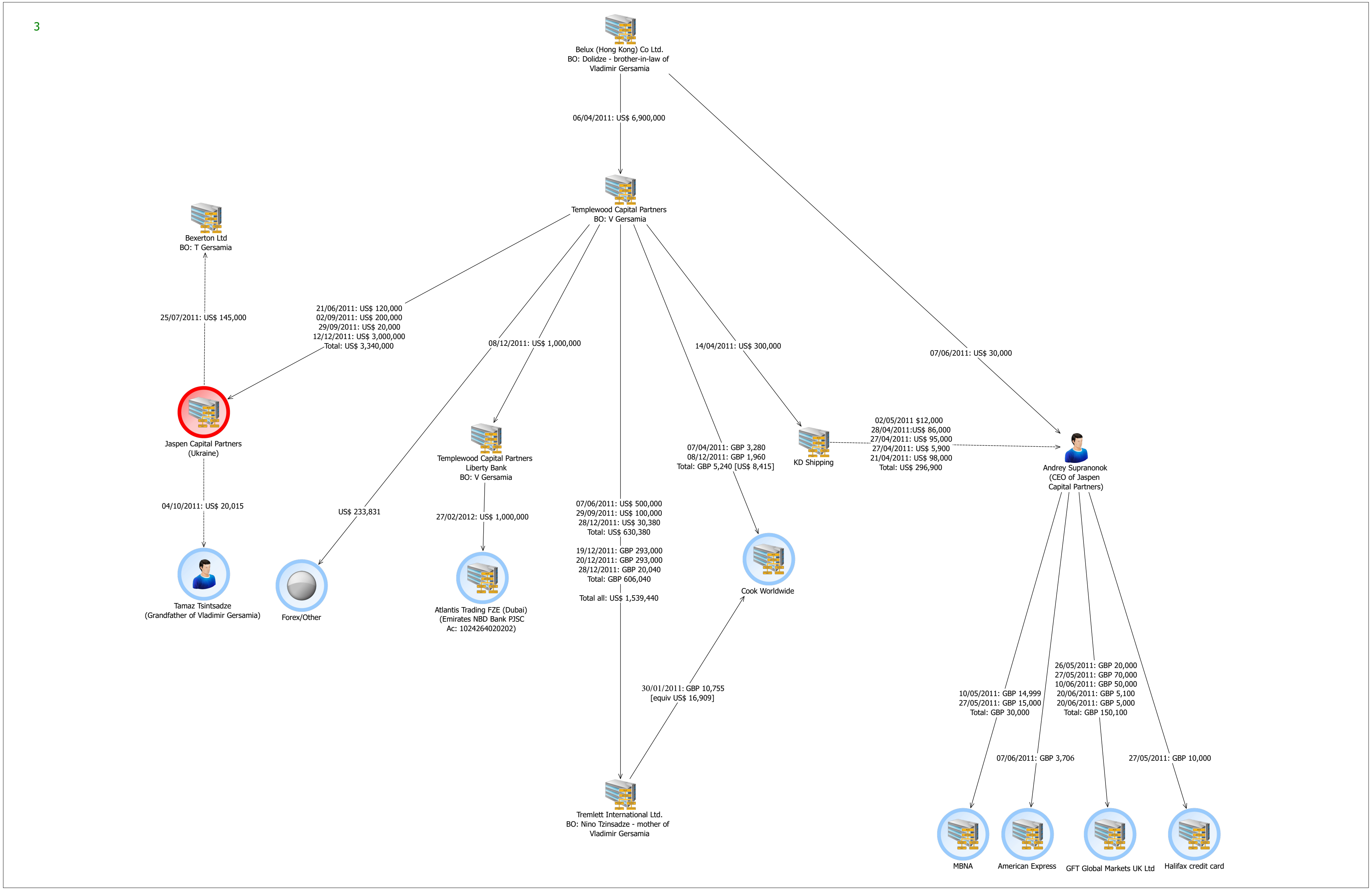
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1
Arcutes
30/03/2011: US$ 10,100,071
Belux (Hong Kong) Co Ltd.
BO: Dolidze - brother-in-law of
Vladimir Gersamia

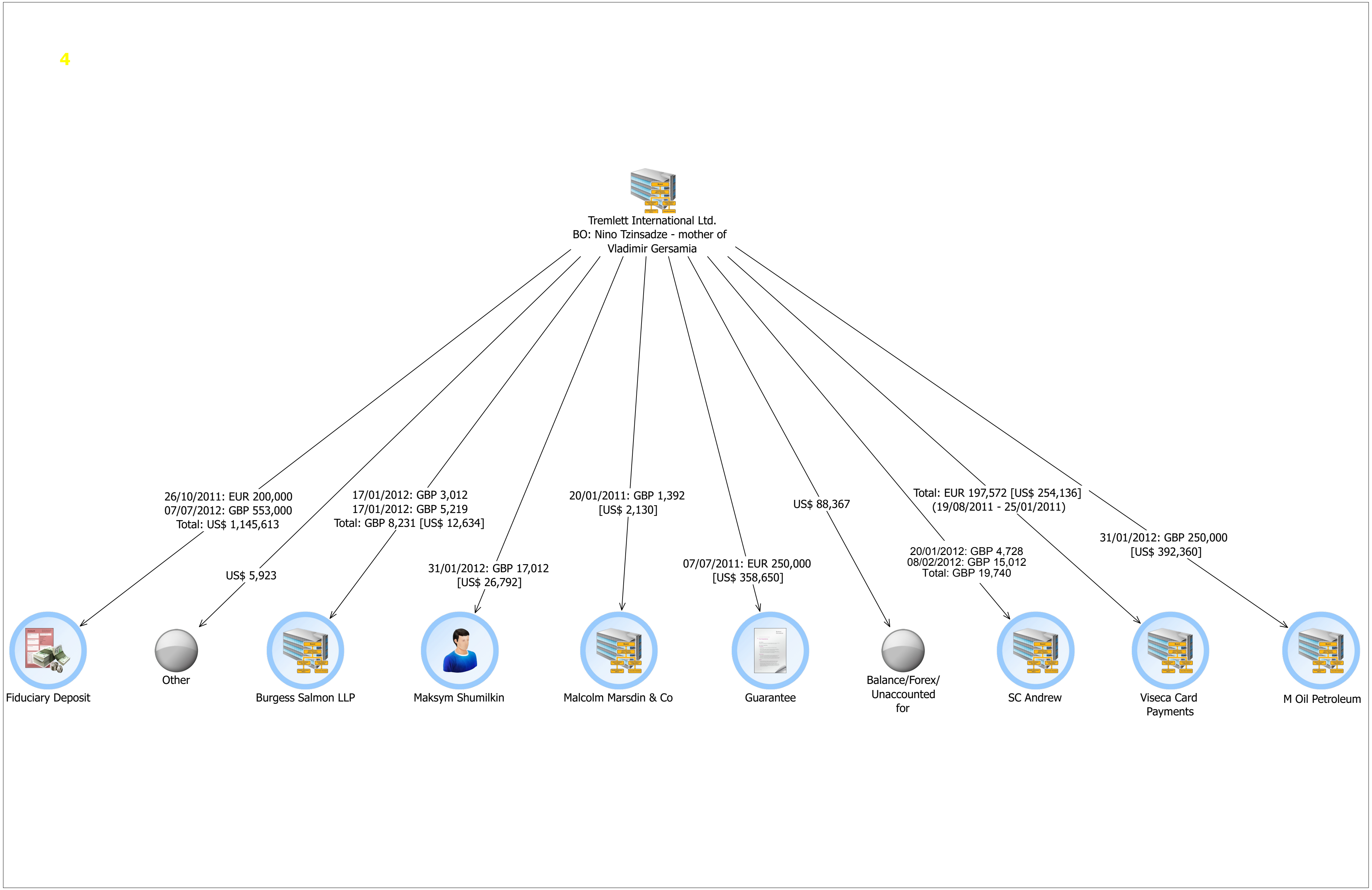
BACK


2
Belux (Hong Kong) Co Ltd.
BO: Dolidze - brother-in-law of
Vladimir Gersamia
08/04/2011: US$ 2,300,000
Teimuraz Gersamia
(father of Vladimir Gersamia)
US$ 2,300,000
Bexerton Ltd
BO: T Gersamia
17/05/2011: US$ 2,500,000
Airdale Ltd.
BO: Gherzi
26/04/2011: US$ 250,000
01/06/2011: US$ 200,000
Total: US$ 450,000
06/04/2011: US$ 6,900,000
Templewood Capital Partners
BO: V Gersamia
09/06/2011: US$ 75,000
Alessandro Gherzi
US$ 154,913
Other
08/04/2011: US$ 26,250
Michelashvili Aharon
22/07/2011: US$ 10,000
Grigol Tatishvili
20/05/2011: US$ 10,000
M AA Van Delft
06/04/2011: US$28,000
09/04/2011: US$13,200
Total: US$ 41,200
Morris Chen
06/04/2011: US$ 550,000
Belux Plus Ltd.
20/04/2011: US$ 11,712
HRE Gmbh
21/04/2011: US$ 84,300
IAA Group US Inc
20/04/2011: US$ 11,625
Avanti Way Realty LLC

BACK

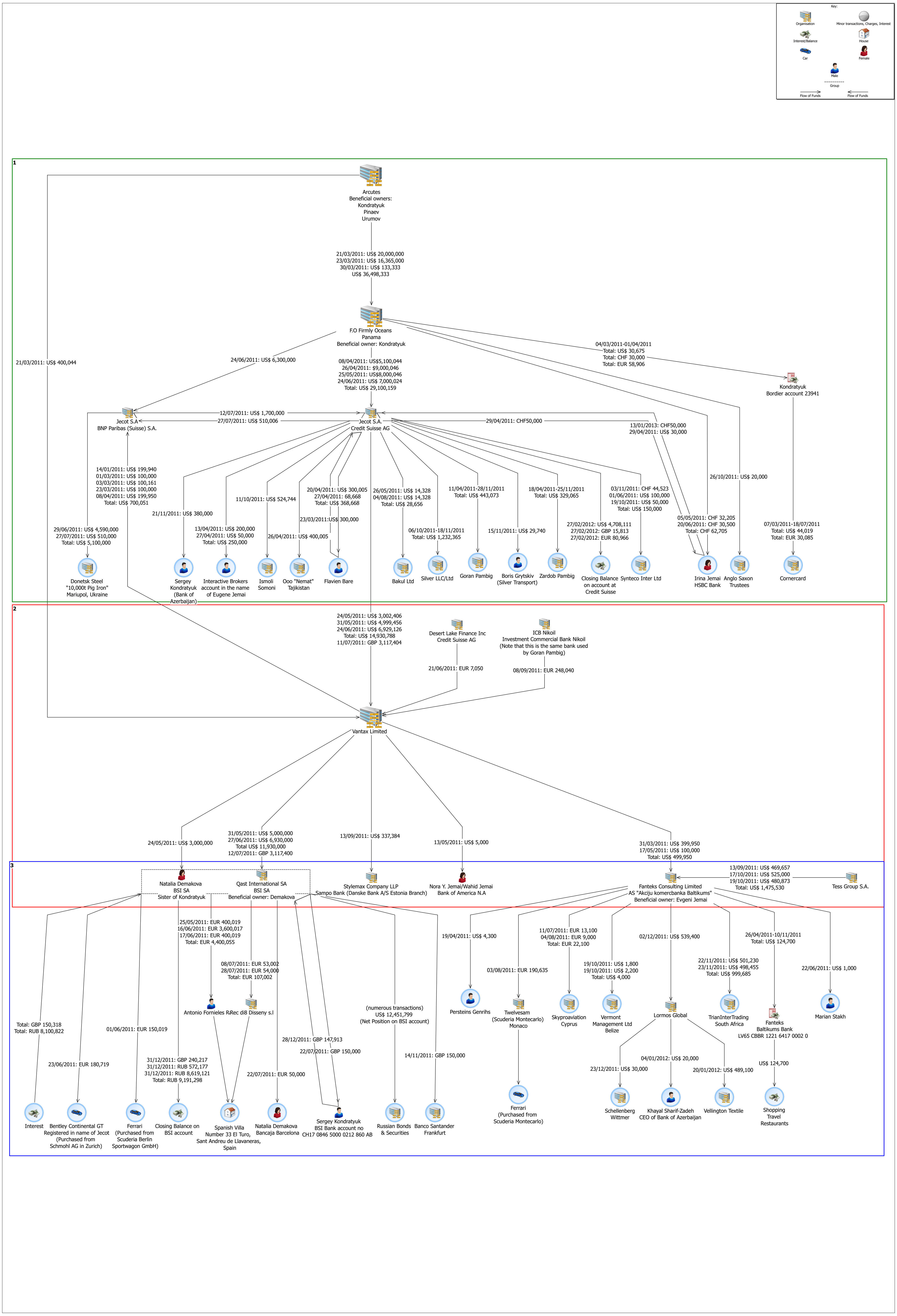

3
Belux (Hong Kong) Co Ltd.
BO: Dolidze - brother-in-law of
Vladimir Gersamia
06/04/2011: US$ 6,900,000
Templewood Capital Partners
BO: V Gersamia
Bexerton Ltd
BO: T Gersamia
25/07/2011: US$ 145,000
21/06/2011: US$ 120,000
02/09/2011: US$ 200,000
29/09/2011: US$ 20,000
12/12/2011: US$ 3,000,000
Total: US$ 3,340,000
08/12/2011: US$ 1,000,000
14/04/2011: US$ 300,000
07/06/2011: US$ 30,000
Jaspen Capital Partners
(Ukraine)
Templewood Capital Partners
Liberty Bank
BO: V Gersamia
07/04/2011: GBP 3,280
08/12/2011: GBP 1,960
Total: GBP 5,240 [US$ 8,415]
KD Shipping
02/05/2011 $12,000
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27/04/2011: US$ 95,000
27/04/2011: US$ 5,900
21/04/2011: US$ 98,000
Total: US$ 296,900
Andrey Supranonok
(CEO of Jaspen
Capital Partners)
04/10/2011: US$ 20,015
US$ 233,831
27/02/2012: US$ 1,000,000
07/06/2011: US$ 500,000
29/09/2011: US$ 100,000
28/12/2011: US$ 30,380
Total: US$ 630,380
19/12/2011: GBP 293,000
20/12/2011: GBP 293,000
28/12/2011: GBP 20,040
Total: GBP 606,040
Total all: US$ 1,539,440
Cook Worldwide
Tamaz Tsintsadze
(Grandfather of Vladimir Gersamia)
Forex/Other
Atlantis Trading FZE (Dubai)
(Emirates NBD Bank PJSC
Ac: 1024264020202)
30/01/2011: GBP 10,755
[equiv US$ 16,909]
Tremlett International Ltd.
BO: Nino Tzinsadze - mother of
Vladimir Gersamia
10/05/2011: GBP 14,999
27/05/2011: GBP 15,000
Total: GBP 30,000
26/05/2011: GBP 20,000
27/05/2011: GBP 70,000
10/06/2011: GBP 50,000
20/06/2011: GBP 5,100
20/06/2011: GBP 5,000
Total: GBP 150,100
07/06/2011: GBP 3,706
27/05/2011: GBP 10,000
MBNA
American Express
GFT Global Markets UK Ltd
Halifax credit card

BACK



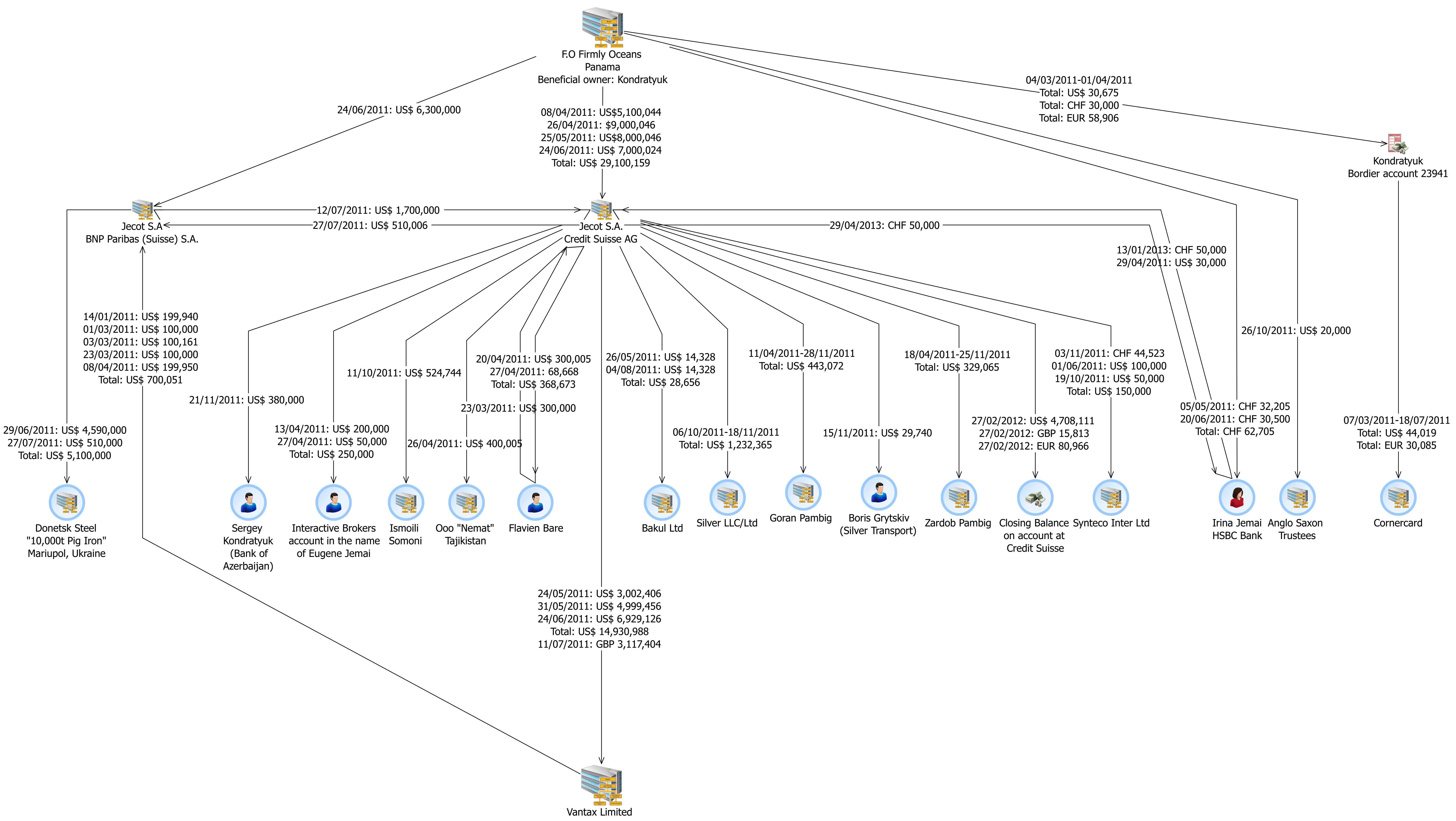
4
Tremlett International Ltd.
BO: Nino Tzinsadze - mother of
Vladimir Gersamia
26/10/2011: EUR 200,000
07/07/2012: GBP 553,000
Total: US$ 1,145,613
US$ 5,923
17/01/2012: GBP 3,012
17/01/2012: GBP 5,219
Total: GBP 8,231 [US$ 12,634]
31/01/2012: GBP 17,012
[US$ 26,792]
20/01/2011: GBP 1,392
[US$ 2,130]
07/07/2011: EUR 250,000
[US$ 358,650]
US$ 88,367
20/01/2012: GBP 4,728
08/02/2012: GBP 15,012
Total: GBP 19,740
Total: EUR 197,572 [US$ 254,136]
(19/08/2011 - 25/01/2011)
31/01/2012: GBP 250,000
[US$ 392,360]
Fiduciary Deposit
Other
Burgess Salmon LLP
Maksym Shumilkin
Malcolm Marsdin & Co
Guarantee
Balance/Forex/
Unaccounted
for
SC Andrew
Viseca Card
Payments
M Oil Petroleum

Figure 9



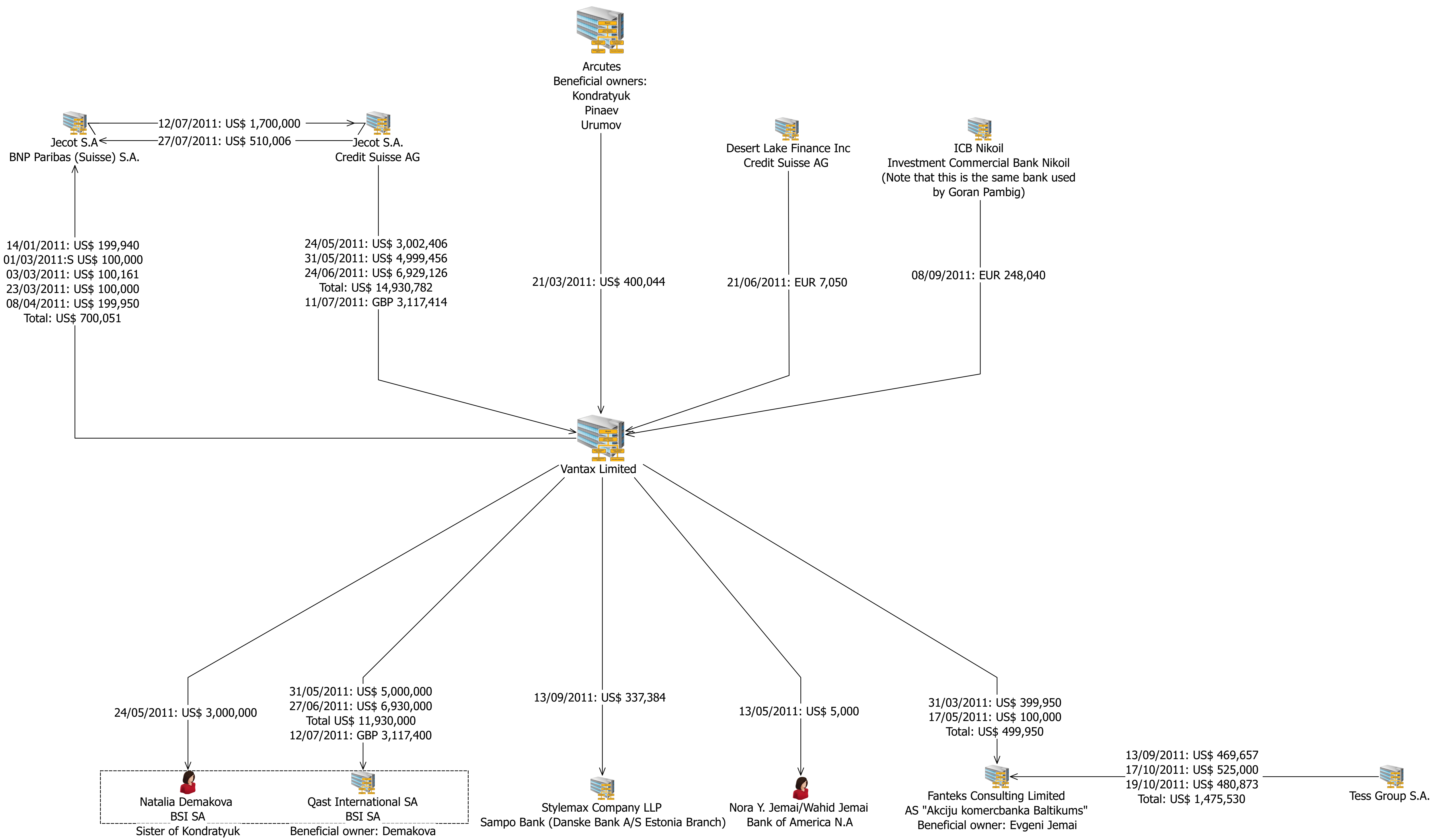
Key:
Organisation
Minor transactions, Charges, Interest
Interest/Balance
House
Car
Female
Male
Group
Flow of Funds
Flow of Funds
1
Arcutes
Beneficial owners:
Kondratyuk
Pinaev
Urumov
21/03/2011: US$ 20,000,000
23/03/2011: US$ 16,365,000
30/03/2011: US$ 133,333
US$ 36,498,333
21/03/2011: US$ 400,044
F.O Firmly Oceans
Panama
Beneficial owner: Kondratyuk
24/06/2011: US$ 6,300,000
08/04/2011: US$5,100,044
26/04/2011: $9,000,046
25/05/2011: US$8,000,046
24/06/2011: US$ 7,000,024
Total: US$ 29,100,159
04/03/2011-01/04/2011
Total: US$ 30,675
Total: CHF 30,000
Total: EUR 58,906
Kondratyuk
Bordier account 23941
Jecot S.A
BNP Paribas (Suisse) S.A.
12/07/2011: US$ 1,700,000
27/07/2011: US$ 510,006
Jecot S.A.
Credit Suisse AG
29/04/2011: CHF50,000
13/01/2013: CHF50,000
29/04/2011: US$ 30,000
14/01/2011: US$ 199,940
01/03/2011: US$ 100,000
03/03/2011: US$ 100,161
23/03/2011: US$ 100,000
08/04/2011: US$ 199,950
Total: US$ 700,051
21/11/2011: US$ 380,000
11/10/2011: US$ 524,744
20/04/2011: US$ 300,005
27/04/2011: 68,668
Total: US$ 368,668
26/05/2011: US$ 14,328
04/08/2011: US$ 14,328
Total: US$ 28,656
11/04/2011-28/11/2011
Total: US$ 443,073
18/04/2011-25/11/2011
Total: US$ 329,065
03/11/2011: CHF 44,523
01/06/2011: US$ 100,000
19/10/2011: US$ 50,000
Total: US$ 150,000
26/10/2011: US$ 20,000
23/03/2011:US$ 300,000
29/06/2011: US$ 4,590,000
27/07/2011: US$ 510,000
Total: US$ 5,100,000
13/04/2011: US$ 200,000
27/04/2011: US$ 50,000
Total: US$ 250,000
26/04/2011: US$ 400,005
06/10/2011-18/11/2011
Total: US$ 1,232,365
15/11/2011: US$ 29,740
27/02/2012: US$ 4,708,111
27/02/2012: GBP 15,813
27/02/2012: EUR 80,966
05/05/2011: CHF 32,205
20/06/2011: CHF 30,500
Total: CHF 62,705
07/03/2011-18/07/2011
Total: US$ 44,019
Total: EUR 30,085
Donetsk Steel
"10,000t Pig Iron"
Mariupol, Ukraine
Sergey
Kondratyuk
(Bank of
Azerbaijan)
Interactive Brokers
account in the name
of Eugene Jemai
Ismoli
Somoni
Ooo "Nemat"
Tajikistan
Flavien Bare
Bakul Ltd
Silver LLC/Ltd
Goran Pambig
Boris Grytskiv
(Silver Transport)
Zardob Pambig
Closing Balance
on account at
Credit Suisse
Synteco Inter Ltd
Irina Jemai
HSBC Bank
Anglo Saxon
Trustees
Cornercard
2
24/05/2011: US$ 3,002,406
31/05/2011: US$ 4,999,456
24/06/2011: US$ 6,929,126
Total: US$ 14,930,788
11/07/2011: GBP 3,117,404
Desert Lake Finance Inc
Credit Suisse AG
ICB Nikoil
Investment Commercial Bank Nikoil
(Note that this is the same bank used
by Goran Pambig)
21/06/2011: EUR 7,050
08/09/2011: EUR 248,040
Vantax Limited
24/05/2011: US$ 3,000,000
31/05/2011: US$ 5,000,000
27/06/2011: US$ 6,930,000
Total US$ 11,930,000
12/07/2011: GBP 3,117,400
13/09/2011: US$ 337,384
13/05/2011: US$ 5,000
31/03/2011: US$ 399,950
17/05/2011: US$ 100,000
Total: US$ 499,950
3
Natalia Demakova
BSI SA
Sister of Kondratyuk
Qast International SA
BSI SA
Beneficial owner: Demakova
Stylemax Company LLP
Sampo Bank (Danske Bank A/S Estonia Branch)
Nora Y. Jemai/Wahid Jemai
Bank of America N.A
13/09/2011: US$ 469,657
17/10/2011: US$ 525,000
19/10/2011: US$ 480,873
Total: US$ 1,475,530
Fanteks Consulting Limited
AS "Akciju komercbanka Baltikums"
Beneficial owner: Evgeni Jemai
Tess Group S.A.
25/05/2011: EUR 400,019
16/06/2011: EUR 3,600,017
17/06/2011: EUR 400,019
Total: EUR 4,400,055
08/07/2011: EUR 53,002
28/07/2011: EUR 54,000
Total: EUR 107,002
19/04/2011: US$ 4,300
11/07/2011: EUR 13,100
04/08/2011: EUR 9,000
Total: EUR 22,100
02/12/2011: US$ 539,400
26/04/2011-10/11/2011
Total: US$ 124,700
03/08/2011: EUR 190,635
19/10/2011: US$ 1,800
19/10/2011: US$ 2,200
Total: US$ 4,000
22/11/2011: US$ 501,230
23/11/2011: US$ 498,455
Total: US$ 999,685
22/06/2011: US$ 1,000
Antonio Fornieles
RRec di8 Disseny s.l
(numerous transactions)
US$ 12,451,799
(Net Position on BSI account)
Persteins Genrihs
Twelvesam
(Scuderia Montecarlo)
Monaco
Skyproaviation
Cyprus
Vermont
Management Ltd
Belize
Lormos Global
TrianInterTrading
South Africa
Fanteks
Baltikums Bank
LV65 CBBR 1221 6417 0002 0
Marian Stakh
Total: GBP 150,318
Total: RUB 8,100,822
01/06/2011: EUR 150,019
28/12/2011: GBP 147,913
22/07/2011: GBP 150,000
14/11/2011: GBP 150,000
23/06/2011: EUR 180,719
31/12/2011: GBP 240,217
31/12/2011: RUB 572,177
31/12/2011: RUB 8,619,121
Total: RUB 9,191,298
22/07/2011: EUR 50,000
04/01/2012: US$ 20,000
23/12/2011: US$ 30,000
20/01/2012: US$ 489,100
US$ 124,700
Ferrari
(Purchased from
Scuderia Montecarlo)
Interest
Bentley Continental GT
Registered in name of Jecot
(Purchased from
Schmohl AG in Zurich)
Ferrari
(Purchased from
Scuderia Berlin
Sportwagon GmbH)
Closing Balance on
BSI account
Spanish Villa
Number 33 El Turo,
Sant Andreu de Llavaneras,
Spain
Natalia Demakova
Bancaja Barcelona
Sergey Kondratyuk
BSI Bank account no
CH17 0846 5000 0212 860 AB
Russian Bonds
& Securities
Banco Santander
Frankfurt
Schellenberg
Wittmer
Khayal Sharif-Zadeh
CEO of Bank of Azerbaijan
Vellington Textile
Shopping
Travel
Restaurants

1.


F.O Firmly Oceans
Panama
Beneficial owner: Kondratyuk
24/06/2011: US$ 6,300,000
08/04/2011: US$5,100,044
26/04/2011: $9,000,046
25/05/2011: US$8,000,046
24/06/2011: US$ 7,000,024
Total: US$ 29,100,159
04/03/2011-01/04/2011
Total: US$ 30,675
Total: CHF 30,000
Total: EUR 58,906
Kondratyuk
Bordier account 23941
Jecot S.A
BNP Paribas (Suisse) S.A.
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27/07/2011: US$ 510,006
Jecot S.A.
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29/04/2011: US$ 30,000
26/10/2011: US$ 20,000
14/01/2011: US$ 199,940
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23/03/2011: US$ 100,000
08/04/2011: US$ 199,950
Total: US$ 700,051
29/06/2011: US$ 4,590,000
27/07/2011: US$ 510,000
Total: US$ 5,100,000
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Total: US$ 250,000
11/10/2011: US$ 524,744
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Total: US$ 368,673
26/05/2011: US$ 14,328
04/08/2011: US$ 14,328
Total: US$ 28,656
06/10/2011-18/11/2011
Total: US$ 1,232,365
11/04/2011-28/11/2011
Total: US$ 443,072
15/11/2011: US$ 29,740
18/04/2011-25/11/2011
Total: US$ 329,065
27/02/2012: US$ 4,708,111
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01/06/2011: US$ 100,000
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Total: US$ 150,000
05/05/2011: CHF 32,205
20/06/2011: CHF 30,500
Total: CHF 62,705
07/03/2011-18/07/2011
Total: US$ 44,019
Total: EUR 30,085
Donetsk Steel
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Mariupol, Ukraine
Sergey
Kondratyuk
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Interactive Brokers
account in the name
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Tajikistan
Flavien Bare
Bakul Ltd
Silver LLC/Ltd
Goran Pambig
Boris Grytskiv
(Silver Transport)
Zardob Pambig
Closing Balance
on account at
Credit Suisse
Synteco Inter Ltd
Irina Jemai
HSBC Bank
Anglo Saxon
Trustees
Cornercard
24/05/2011: US$ 3,002,406
31/05/2011: US$ 4,999,456
24/06/2011: US$ 6,929,126
Total: US$ 14,930,988
11/07/2011: GBP 3,117,404
Vantax Limited

Back

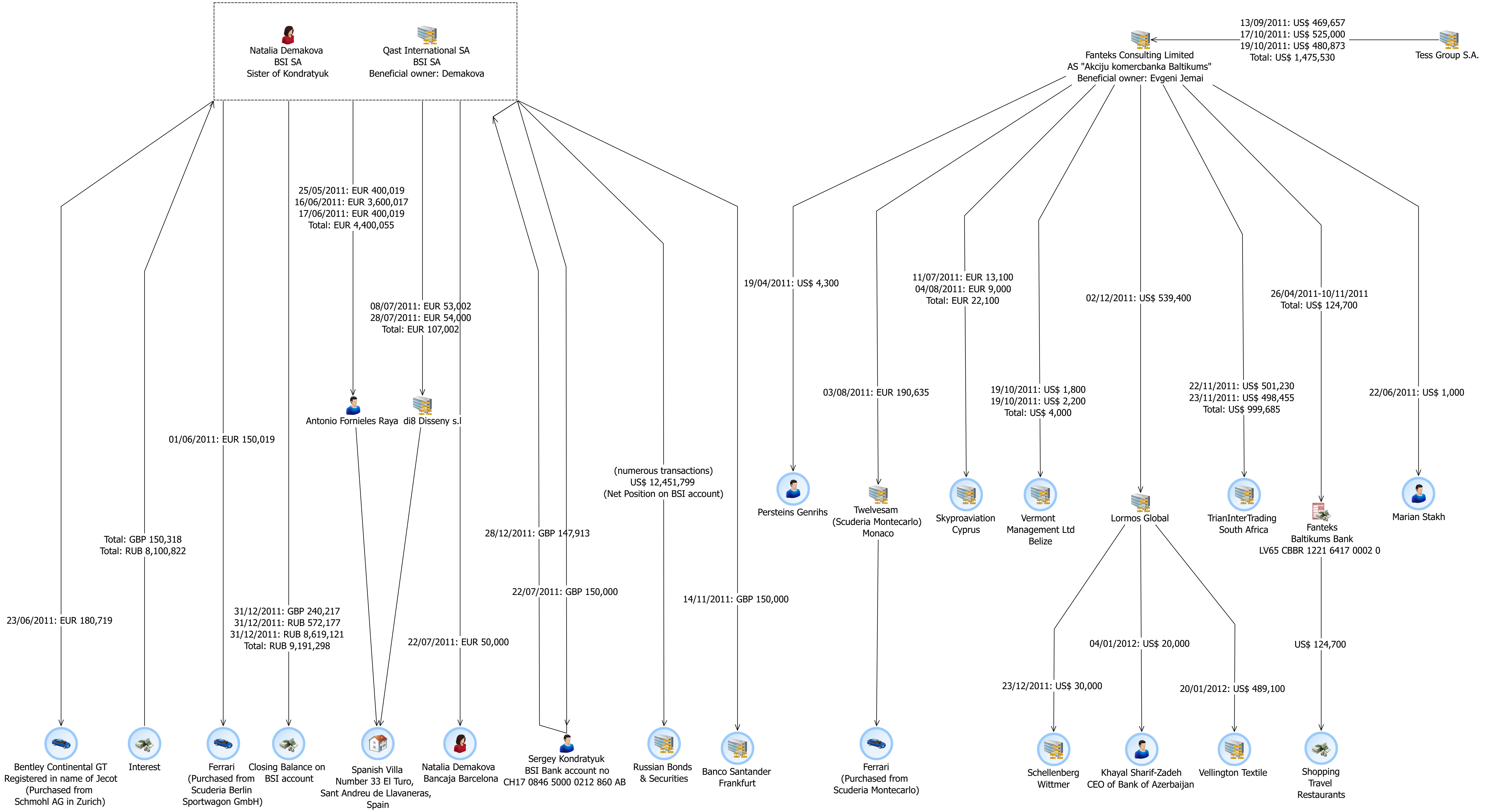
2.



Arcutes
Beneficial owners:
Kondratyuk
Pinaev
Urumov
12/07/2011: US$ 1,700,000
27/07/2011: US$ 510,006
Jecot S.A
BNP Paribas (Suisse) S.A.
Jecot S.A.
Credit Suisse AG
Desert Lake Finance Inc
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ICB Nikoil
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01/03/2011:S US$ 100,000
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23/03/2011: US$ 100,000
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Total: US$ 700,051
24/05/2011: US$ 3,002,406
31/05/2011: US$ 4,999,456
24/06/2011: US$ 6,929,126
Total: US$ 14,930,782
11/07/2011: GBP 3,117,414
21/03/2011: US$ 400,044
21/06/2011: EUR 7,050
08/09/2011: EUR 248,040
Vantax Limited
24/05/2011: US$ 3,000,000
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27/06/2011: US$ 6,930,000
Total US$ 11,930,000
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Sister of Kondratyuk
Qast International SA
BSI SA
Beneficial owner: Demakova
Stylemax Company LLP
Sampo Bank (Danske Bank A/S Estonia Branch)
Nora Y. Jemai/Wahid Jemai
Bank of America N.A
Fanteks Consulting Limited
AS "Akciju komercbanka Baltikums"
Beneficial owner: Evgeni Jemai
Tess Group S.A.

Back

3.



Natalia Demakova
BSI SA
Sister of Kondratyuk
Qast International SA
BSI SA
Beneficial owner: Demakova
Fanteks Consulting Limited
AS "Akciju komercbanka Baltikums"
Beneficial owner: Evgeni Jemai
13/09/2011: US$ 469,657
17/10/2011: US$ 525,000
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di8 Disseny s.l
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Total: RUB 8,100,822
23/06/2011: EUR 180,719
31/12/2011: GBP 240,217
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28/12/2011: GBP 147,913
22/07/2011: GBP 150,000
(numerous transactions)
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(Net Position on BSI account)
14/11/2011: GBP 150,000
Bentley Continental GT
Registered in name of Jecot
(Purchased from
Schmohl AG in Zurich)
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(Purchased from
Scuderia Berlin
Sportwagon GmbH)
Closing Balance on
BSI account
Spanish Villa
Number 33 El Turo,
Sant Andreu de Llavaneras,
Spain
Natalia Demakova
Bancaja Barcelona
Sergey Kondratyuk
BSI Bank account no
CH17 0846 5000 0212 860 AB
Russian Bonds
& Securities
Banco Santander
Frankfurt
19/04/2011: US$ 4,300
03/08/2011: EUR 190,635
11/07/2011: EUR 13,100
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Persteins Genrihs
Twelvesam
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Cyprus
Vermont
Management Ltd
Belize
Lormos Global
TrianInterTrading
South Africa
Fanteks
Baltikums Bank
LV65 CBBR 1221 6417 0002 0
Marian Stakh
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(Purchased from
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CEO of Bank of Azerbaijan
Vellington Textile
Shopping
Travel
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